

No. 16199

See Also

3098

United States
Court of Appeals
For the Ninth Circuit

JAMES BURTON ING and RAYMOND
WRIGHT,

Appellants,

vs.

UNITED STATES OF AMERICA,

Appellee.

Transcript of Record
In Two Volumes

Volume II
(Pages 277 to 569)

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for the District of Alaska,
Third Division

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(Testimony of Edward J. Harkabus.)

(Thereupon, at 12:00 o'clock noon, February 24, 1958, the Court continues the cause to 2:00 o'clock p.m. of the same day.)

(At 2:00 o'clock p.m., February 24, 1958, counsel for plaintiff being present and counsel for the defendants being present, the trial of said cause was resumed and the following proceedings were had out of the hearing of the jury and the spectators:)

The Court: You may proceed, Mr. Plummer.

Q. (By Mr. Plummer): Thank you, your Honor. Was it your testimony, Mr. Harkabus, that you were present at all times and in fact typed up the certificate marked for identification as Plaintiff's Exhibit No. 20? [249] A. It is.

Mr. Plummer: May I approach the witness, your Honor?

The Court: You may.

Q. (By Mr. Plummer): And was it your testimony this morning, sir, that before the statement was typed and signed by Mr. Charles E. Smith, that he had an attorney come there to help him?

A. Yes.

Q. Now, was there at any time any threat made to Mr. Smith? A. No.

Q. Was there at any time any promise made to Mr. Smith? A. No, sir.

Q. Now, would you tell me, if you know, that the—if the defendant Smith was arraigned on this charge down in Seattle? A. He was.

(Testimony of Edward J. Harkabus.)

Q. And do you know the date he was arraigned?

A. March 18, 1957.

Q. Now, subsequent to the arraignment, did you—or, prior to arraignment did this defendant waive extradition?

A. I was informed that he had, yes.

Q. Well, did you return to the Territory of Alaska with this defendant?

A. Yes, I did.

Q. And do you know what date that was?

A. It would have been the 21st day of March, 1957. [250]

Q. And did you ride on the same plane with him? A. I did.

Q. And could you tell us, if you recall, how you were seated in the plane?

A. Well, a portion of the time, as I recall, I sat adjacent to the defendant, Mr. Smith, and we engaged in conversation at that time.

Q. That would be two-abreast, sitting, and you were seated with him? A. Yes, sir.

Q. Did you talk to him about the contents of the statement at that time?

A. We mentioned it, yes.

Q. And do you recall what his statements were in regard to the statement?

Mr. Nesbett: I will object to that. After all, we are only concerned with one thing at the moment and that is this particular statement that was written and is being offered in evidence, as I understand it.

(Testimony of Edward J. Harkabus.)

The Court: That is correct, Mr. Plummer.

Mr. Plummer: This conversation has to do with this statement that we are offering in evidence now, Plaintiff's Exhibit No. 20, your Honor.

The Court: Well, would it go to the admissibility or inadmissibility of that statement? [251]

Mr. Plummer: I think it probably would go to the admissibility of it if it does get in. Of course, the jury is gone—if the Court thinks——

Mr. Nesbett: I will withdraw the objection.

The Court: There is nothing before the Court. You may proceed.

Q. (By Mr. Plummer): Tell me what he said in regard to the statement at that time.

A. I asked him if he knew any more than he had incorporated in his statement, if he had any additional details, and he said, no, that as far as he could recall that this was in fact what had happened in his participation in the M-K check deal.

Q. You made no threats or promises to him on that occasion? A. I did not.

Q. Now, do you recall whether or not this defendant was arraigned after he got back to Anchorage on the same charge?

A. I was informed that he was, but I don't know of my own knowledge.

Q. I would ask the Court to take notice of its own files, look at the Held to Answer papers which will show that this defendant was arraigned in Commissioner's Court, advised of his rights by Com-

(Testimony of Edward J. Harkabus.)

missioner Warren Colver on March 21, 1957, at Anchorage.

The Court: The Court will take judicial notice then of [252] its own records.

Mr. Plummer: Thank you, your Honor.

The Court: You may proceed.

Q. (By Mr. Plummer): And, following the date I just mentioned, did you have an occasion to see this defendant in my office? A. I did.

Q. And who else was present, if you know?

A. Mr. Pass and yourself.

Q. And what, if anything, did I do at that time with regards to this Plaintiff's Exhibit No. 20 that you had in your hand?

A. Well, my recollection is that you went over the statement here where—and it was reaffirmed by the defendant, Mr. Smith, and additionally——

Q. Did I have a conversation with him?

A. Yes, you did.

Q. And would you tell me what that conversation was?

A. Well, the conversation was to the effect, "Do you have any additional knowledge other than that contained in the statement concerning the M-K check scheme."

Q. And do you recall what the defendant's answer was?

A. He said, "No, sir. It's all in the statement."

Q. And did we have any further conversation at that time and place in your presence?

A. Well, my recollection is that the defendant

(Testimony of Edward J. Harkabus.)

indicated to you [253] at that time that he wanted to plead guilty to this charge and to begin service of his sentence immediately so he'd get it over with.

Q. Yes, sir. Now, did you have occasion to see the defendant at a later time? A. I did.

Q. And would you tell us when that was, sir?

A. That would have been March 27, 1957.

Q. And would you tell us where that was?

A. It was Territorial Police Headquarters.

Q. And will you tell the Court who was present during that time you saw him, at the time you saw him?

A. At the time I saw him at the Territorial Police Headquarters, Officer Ed Dankworth, polygraphic examiner for the T. P. was there, where we had an interview with Mr. Smith concerning another matter.

Q. Was there any conversation about Plaintiff's Exhibit No. 20 at that time?

A. There was.

Q. And would you tell us what that was, sir?

A. Well, in effect, Mr. Smith reiterated the veracity of the statement at that time.

Q. And did you have occasion to see him on another time in the company with anybody else?

A. Well, that same date that I have mentioned, on March 27th, [254] I was with Mr. Smith and Sgt. Laird of the Territorial Police and Mr. Pass, I believe, and we used the statement; we went over the statement in detail to attempt to ascertain the places that had been visited by Mr. Smith during

(Testimony of Edward J. Harkabus.)

the course of his passing the bogus checks and the subsequent actions of Mr. Smith when he got rid of the merchandise that he had picked up during the course of this swindle, check swindle, and Mr. Smith at that time was very cooperative in attempting to show us the various locations of the roads and so forth, but it was rather difficult inasmuch as I believe there was still snow on the ground, or something to that effect, but we did go around to the various places that are indicated in this statement.

Q. Now, did—were any threats made to him on that occasion? A. No, sir.

Q. Were any promises made to him on that occasion? A. No, sir.

Mr. Plummer: I have no further questions to ask this witness. I would ask leave of Court, however, that after the cross-examination—after he has been excused, if the Court finds it necessary, I will want to recall him to—after we have elicited all the information on it.

The Court: For that purpose, you may do so. You may proceed, Mr. Nesbett. [255]

EDWARD J. HARKABUS

testifies as follows on

Cross-Examination

By Mr. Nesbett:

Q. Mr. Harkabus, when was the first date that you first saw Mr. Smith?

A. The first date that I saw Mr. Smith would

(Testimony of Edward J. Harkabus.)

have been approximately March 15th of 1957. I may have seen him in Fairbanks prior to that time, but I had no reason to see him.

Q. In connection with this case it was approximately March 15th of 1957, is that right?

A. That's right, sir.

Q. And was that in Seattle?

A. That was in Renton, Washington.

Q. In Renton. Are you sure that was the 15th? You said "approximately" and I was wondering if you could be certain that it was that?

A. I am certain it was that.

Q. What day of the week was it?

A. The 15th I believe was a Friday.

Q. And where did you see Mr. Smith on that date, first?

A. Well, where I saw him was at his residence at 11815 78th South Avenue, Renton, Washington. Mr. Smith—I was in the vehicle of the King County Sheriff's Office.

Q. I just asked you where you saw him. You have answered the [256] question.

A. All right, sir.

Q. Did you have occasion to go into the residence at that address you recited?

A. I did not.

(The witness answered simultaneously and prior to the completion of the question.)

Q. Will you wait until I finish the question be-

(Testimony of Edward J. Harkabus.)

fore you attempt to answer it? Mr. Harkabus, did you attempt to go into the residence at that address?

A. No.

Q. Did you ever go into the residence at that address? A. No, sir.

Q. Who was with you on that occasion?

A. It was Lt. Wayland of the King County Sheriff's office and Special Deputy Marshal Ted Pass, Lt. William Trafton——

Q. Well, Lt. Trafton was a member of the Territorial Police in Alaska, was he not?

A. Yes, sir.

Q. And Mr. Pass was a member of the Anchorage Police Force, is that right?

A. Well, my information was that he was a Special Deputy U. S. Marshal, Mr. Nesbett.

Q. I see, and you were Special Deputy for the Fire Underwriters?

A. No, I am Special Agent with them.

Q. Special Agent? [257] A. Yes, sir.

Q. And Wayland was with the Sheriff's office there? A. King County Sheriff's office.

Q. You all three traveled in the same car to the address in Renton, didn't you?

The Court: You——

A. We did.

The Court: You mean all four, don't you, counsel?

Q. (By Mr. Nesbett): All four, excuse me—including the Sheriff's Deputy—all four of you traveled to that address in Renton?

(Testimony of Edward J. Harkabus.)

A. Yes, sir.

Q. And did any one of you four have a warrant for Mr. Smith's arrest?

A. I believe that Mr. Pass had the warrant.

Q. You believe that he had it. Did you see it?

A. Yes, I did.

Q. You saw it? A. Yes, sir.

Q. And what did the warrant indicate the reasons were for arresting Mr. Smith?

A. Well, I believe it was for forgery, offhand. I didn't look at it in detail. In fact, my recollection is that I just saw it in a passing glance.

Q. What were you doing with that group anyway? Aren't you ordinarily concerned with fire losses and such? [258]

A. Fire losses and other losses, Mr. Nesbett.

Q. And are you ordinarily connected with crime investigation other than arson? A. Yes.

Q. How did you happen to be with these three officers on that date?

A. I happened to be with them because I was conducting another investigation and I desired to interview Mr. Smith and the reason that I was with them was that there was a Marshal's party that was leaving from Fairbanks and that I was sent out as a guard for them.

Q. So that put you in Seattle, is that right?

A. That's right.

Q. And you were investigating another matter and you wanted to go along with these officers on that day to see Mr. Smith? A. That is right.

(Testimony of Edward J. Harkabus.)

Q. Now, to get back to the warrant, did you actually see and read the warrant?

A. I didn't read it, no.

Q. Did Officer Pass ever show it to you?

A. Yes, he did.

Q. And where did he show it to you?

A. Well, I believe that I saw it when he—I am not sure of this point now. I believe he read it to Mr. Smith. If it wasn't at Mr. Smith's residence, I believe that he read it [259] to him at the King County Jail, or the Sheriff's office, rather, not the King County jail.

Q. You went into the residence then, didn't you?

A. No, I didn't go into the residence.

Q. You didn't go into the residence at all?

A. No, sir.

Q. What preliminary steps were taken by the King County Sheriff's office with respect to determining whether or not Mr. Smith was at home at that address on that date?

A. I believe that Lt. Wayland radioed to the dispatcher at King County and requested that he make a pretext call to Mr. Smith to ascertain whether or not he was home at that time.

Q. And it was determined that Mr. Smith answered the telephone so the officers then went up to the door of the residence, isn't that right?

A. Yes, sir.

Q. And where were you?

A. Well, I was by the vehicle in the driveway.

(Testimony of Edward J. Harkabus.)

Q. And rather short, fifteen to twenty feet from the door, were you?

A. Well, in actuality there was no door. It was boarded over was my recollection of it.

Q. The door was boarded over?

A. I believe so; that was in the front [260] portion.

Q. Where did they go, to the rear door?

A. I assume they did.

Q. Did you get out of the car at all?

A. I got out of the car, yes.

Q. Did you walk toward the rear door?

A. Well, I was near the car. I mean, I may have walked toward the front fender, but I mean, as far as entering, if that is what you are implying, why, I didn't.

Q. Well, don't be concerned with what I am implying, just answer the question. Where did you go when you got out of the car?

A. I got out of the car and I was in the driveway, Mr. Nesbett.

Q. Well, were you standing next to the car or away from the car?

A. I was standing adjacent to the car.

Q. You could see the doorway from where you were standing?

A. Yes, sir.

Q. The three other officers went to the doorway, did they?

A. No, they went to the rear of the house.

Q. Well, there was a door there, wasn't there?

A. Where?

(Testimony of Edward J. Harkabus.)

Q. There was a door at the rear of the house, wasn't there?

A. Well, I don't know if there was or not. I would assume there was.

Q. Well, you said you could see them from where you stood. Now, [261] could you see a door or not?

A. I said I could see the door from where I stood.

Q. All right, the three officers went to the door, did they not?

A. Not to the door I could see. They went up to the driveway beyond my range of vision.

Q. When—then you couldn't see how or where they entered that house, is that your testimony?

A. Yes.

Q. Did you overhear anything that occurred before they entered? A. No.

Q. You didn't overhear a thing. How far were you from the point where they entered the house, if you can estimate?

A. Well, if I don't know where they entered the house, it would be hard for me to tell you that.

Q. Well, don't argue with me. Can you tell me yes or no? Can you judge that distance or not?

A. Will you repeat?

Q. Can you estimate that distance from where you were standing to where they entered the house?

A. Well, I could estimate the distance toward the rear end of the driveway.

Q. All right. How far is that?

(Testimony of Edward J. Harkabus.)

A. Maybe fifty feet.

Q. Fifty feet?

A. Something like that. [262]

Q. Then you were fifty feet from the door at the time the three officers disappeared from your view, is that about it?

A. That is about right.

Q. And they disappeared in the direction of the house so that the entrance would be somewhere beyond fifty feet from you, is that right?

A. I would say so, offhand.

Q. You—did you overhear anything they said before they entered?

A. No, sir, not to my recollection, I didn't.

Q. Did you overhear Mrs. Smith say that "Charles Smith is not here"?

A. I did not.

Q. You didn't hear anything else? (pause) You heard the Sheriff—King County Sheriff's officer announce his identity?

A. I am sure he identified himself; I believe I did hear that.

Q. You did hear that?

A. I believe I heard it.

Q. And did you hear him ask if Mrs. Smith—if Charles Smith was there?

A. No, sir, I didn't.

Q. Well, didn't you listen after you heard the first remark?

A. Well, I am not even positive that I heard it.

(Testimony of Edward J. Harkabus.)

I would assume that he did announce his identity. That's the only—— [263]

Q. You know, as a matter of fact, Mr. Harkabus, that Mrs. Smith, the defendant's mother said, "He's not here," and that the officer brushed her aside and went straight on in the house, don't you? You don't want to admit it?

A. I do not, Mr. Nesbett.

Q. You don't know that? A. No.

Q. You overheard a part of the conversation; you heard the officer announce his identity, didn't you? A. I said I believe that I did, yes.

Q. Well, you wouldn't believe that you heard it unless there was some good basis in your memory for thinking that you had heard it, would you?

A. I have already answered your question; I believe that I heard it, Mr. Nesbett.

Q. But you didn't hear another thing that occurred there?

A. I didn't hear the conversation that you have outlined to me, no.

Q. What did you next see or hear?

A. I believe that he came—that they came out with the defendant, Mr. Smith.

Q. You believe that they came out with him?

A. Yes, sir.

Q. Well, they did, didn't they?

A. Well, they did in fact. [264]

Q. And is that the next thing you observed after you heard the officer announce his identity at the door? A. As far as from where I was, yes.

(Testimony of Edward J. Harkabus.)

Q. Who had Mr. Smith in custody of those three officers? A. I believe Mr. Pass did.

Q. And was he handcuffed?

A. I don't recall.

Q. Was Mrs. Smith to be seen yet at all, the defendant's mother?

A. I never did see Mrs. Smith.

Q. You never did? A. No, sir.

Q. Are you sure you didn't go in that house?

A. I am positive.

Q. But you saw a warrant that Officer Pass had?

A. Well, my recollection was that he showed me the warrant. I can't remember whether it was prior to the time or later at King County jail. Now, that is what I said.

Q. You aren't sure whether he had a warrant at that time or not, are you?

A. I am pretty sure he did, or he wouldn't be arresting him.

Q. You hoped he had, but you are not sure?

A. I didn't necessarily "hoped" he had.

Q. You didn't see it prior to their entering the house on that day, did you?

A. Well, I previously testified that I thought that I had. [265]

Q. Well, if you saw——

A. And I am trying to——

Q. Go ahead.

A. I am trying to remember exactly. It's been a little while ago, but——

(Testimony of Edward J. Harkabus.)

Q. If you saw it later at the King County jail—can you remember now where the warrant issued, out of which or whose jurisdiction?

A. I believe it was out of Anchorage, out of this court.

Q. Out of this court? A. Yes, sir.

Q. And that it was a warrant for the crime of forgery? A. I believe that's right.

Q. You believe that's right?

A. Uttering a false instrument, or something to that effect. I didn't arrest Mr. Smith, so I'd have no idea why or what the full charge is.

Q. I realize that. I am just trying to find out what you remember, if anything. Now, what was done with Mr. Smith by the officers and yourself?

A. Well, he was transported then from his residence there to King County Sheriff's Office.

Q. About what time of day was that?

Q. I'd estimate that we arrived at Mr. Smith's residence around 3:30 or somewhere [266] thereabouts.

Q. Can you estimate approximately when you arrived at the King County jail?

A. Well, I don't know the exact distance to Renton, but I do recall that we were slowed up quite a bit because of Boeing traffic which apparently has a shift change at that time and just on the assumption that it was around 3:30, I believe it would have been perhaps around 4:30; maybe not that long, maybe half an hour or some-

(Testimony of Edward J. Harkabus.)

thing like that. I don't know how far it is, actually, to Renton.

Q. Probably 4:30 when you arrived at the King County jail, approximately?

A. Just roughly I'd say, yes.

Q. What was done then with Mr. Smith, if you know?

A. I believe he was interviewed by Mr. Pass and Mr. Trafton.

Q. Where was the interview conducted?

A. It was at King County or the King County Sheriff's office.

Q. You were present too, weren't you?

A. I believe that I only asked Mr. Smith a couple of questions at that time and he indicated that he didn't have any knowledge of that, so that I wasn't present if you mean throughout the interview, no, sir.

Q. Well, were you present at the commencement of the interview?

A. Yes.

Q. And did you ask your questions concerning the matter you were investigating before the other officers— [267]

A. No, sir.

Q. (Continuing): —commenced their investigation?

A. No, sir.

Q. Who commenced the investigation or interview first, which officer?

A. I believe Mr. Pass did.

Q. I see. How long was Mr. Pass engaged in his interview?

A. Well, after Mr. Pass told the defendant that

(Testimony of Edward J. Harkabus.)

he didn't have to make a statement and that he was entitled to the services of an attorney, he went in and began to ask him about his participation, alleged participation, of the M-K check deal and I can't recall how long I was in the room—maybe half an hour.

Q. Then did you have an opportunity then to ask your questions?

A. Yes, I did. I told him that I didn't have too much interest in this other matter and that I wanted to ask him these questions if I could.

Q. Did you ask him? A. I did.

Q. And did he answer? A. He answered.

Q. And did you then leave?

A. I left the room, yes.

Q. You left the room. Was the defendant and the other officers still there? [268]

A. Yes, sir.

Q. The other officers were still interviewing, is that your recollection? A. Yes, sir.

Q. Did you go back in that interview room that day?

A. I may have been in there later, yes.

Q. You may have? A. Yes.

Q. Well, don't you recall whether you went in there later or not?

A. Yes, I do recall and I don't believe I re-entered the interview room. I was in the chief deputy's office is my recollection.

Q. Was that the—adjacent to the interview room?

(Testimony of Edward J. Harkabus.)

A. Well, it's down the hall from it, yes.

Q. As a matter of fact, didn't you remain in that interview room until late at night, until Mr. Smith finally signed the consent to be extradited?

A. No, sir.

Q. You did not? A. No, sir.

Q. Would you say then that after you arrived at King County jail, that you left the interview room at approximately 5:00 o'clock or thirty minutes after you got there?

A. I'd say that that is about right, yes, a little after five. [269]

Q. And that you never returned to the interview room that evening?

A. Well, I may have ducked in there or out; I am not sure of that.

Q. Did you take any part in the interview after you had asked your questions?

A. After I left, I don't believe that I did, no, sir.

Q. You don't believe that you did. Is your recollection hazy on that point?

A. Not particularly.

Q. Now, you have testified, I believe, that Officer Pass informed the defendant that he was entitled to counsel? A. Yes, sir.

Q. And that he need not make a statement?

A. Yes, sir.

Q. Well, did he come right out and say right at the commencement of the interview, "Now, you don't have to make a statement"?

A. He did. He informed him that he didn't have

(Testimony of Edward J. Harkabus.)

to make it; that he could have the services of an attorney.

Q. You remember that? A. I do.

Q. Very well? A. Yes.

Q. Was the defendant sitting down or standing up at that time? [270] A. He was sitting.

Q. Where were you in the room with relation to the defendant?

A. I would have been to the left of him, I believe.

Q. Weren't you sitting at a desk in the room?

The Court: Well, it was a long table what I recall.

Q. (By Mr. Nesbett): You were sitting at the table, weren't you?

A. I wasn't—if you mean was I sitting directly in front of the defendant, Mr. Nesbett—

Q. Were you sitting at the table, first?

A. I was at the table, yes.

Q. And the defendant was close by you, was he?

A. No.

Q. Sitting at the table, also?

A. Well, I believe he was on the other side.

Q. Was Lt. Pass standing or sitting?

A. He was sitting.

Q. Were those relative positions maintained for approximately the thirty minutes that you were in there? A. I believe they were.

Q. All right, now, did you see Mr. Smith again that day that you remember as Friday the 15th, after you had once left the interview room?

(Testimony of Edward J. Harkabus.)

A. I don't believe that I did, no.

Q. Mr. Smith hadn't admitted any implication or connection with [271] this M-K matter as of the time you left that room, had he? A. No.

Q. He had not, had he? A. No.

Q. Now, when did you next see Mr. Smith?

A. I next saw him on the 17th.

Q. That would be on a Sunday, would it not?

A. Yes, sir.

Q. At about noon?

A. No, I believe it was after that. I had previously testified it was somewhere around 2:00 o'clock, as I recall.

Q. Well, it was afternoon then?

A. Yes, sir.

Q. And who was with you on that occasion and where did you see him?

A. I saw him at King County jail. Lt. Trafton was with me and Officer Pass.

Q. And are those the only persons?

A. Yes, sir.

Q. And did you use the same interview room that had been used the day before?

A. No, sir.

Q. Another room?

A. It was another section of the same building but he had been incarcerated in the jail, understand. [272]

Q. Overnight, he had been in jail overnight?

A. Yes, sir.

Q. Now, was the interview continued with Mr.

(Testimony of Edward J. Harkabus.)

Smith? A. Continued, yes.

Q. Who conducted the interview?

A. Well, there were three of us present and I believe we all took a part in the interview.

Q. Didn't you, Mr. Harkabus, carry the main part of the interview as far as the officers were concerned?

A. I believe that you might say that I did, yes.

Q. You were seated at a table, weren't you, and Mr. Smith was somewhat on your left at the same table? A. Uh-huh.

Q. And Lt. Pass was sitting down to Smith's left, somewhat? A. Well——

Q. Is that about right?

A. Well, no, I believe that Special Deputy Pass was across the table from me and that would have put him on Smith's left.

Q. Smith's left, and Trafton was standing up, wasn't he? A. I believe he was.

Q. And that those were the only persons present when the interview was commenced on Sunday, is that right? A. Initially, yes.

Q. Initially, yes. Now, what was the nature of the interview as far as you were concerned and as far as you participated [273] on that Sunday? Was it in connection with this M-K matter or the matter that you were interested in?

A. Well, it was a little of both.

Q. A little of both? A. Yes, sir.

Q. And was it during that interview that Mr. Smith admitted connection with this M-K thing?

(Testimony of Edward J. Harkabus.)

A. Yes, sir.

Q. Now, approximately how long after he had been in the interview room was it that he made an admission?

A. I believe it was around, roughly, forty-five minutes, something like that.

Q. Now, during that forty-five minutes, were you, yourself, making notations of anything that Mr. Smith was saying?

A. I was, yes.

Q. You were making penciled notations, weren't you?

A. Yes, sir.

Q. I'll ask you, during that interview didn't the jailer have occasion to announce that Mr. Smith's attorney was there and wanted to see him?

A. He did.

Q. And did you not tell the jailer, "The attorney can see him when we get thru with him"?

A. I did not.

Q. You did not? You deny that specifically?

A. I do, specifically and vehemently.

Q. Right. Now, what happened then after the jailer announced that Mr. Smith's attorney was there?

A. There was some conversation as to whether or not we should continue the interview and I suggested that we let him see his attorney. That was my suggestion.

Q. There was some conversation between whom?

A. Well, Mr. Pass said that he—the jailer initially came up and said when they're booked as a Federal prisoner, something to the effect that their

(Testimony of Edward J. Harkabus.)

policy at King County was that they didn't let them in unless they—it was all right with the officer or something to that effect, but——

Q. Well, now, don't go too fast and get us confused. The jailer said there was a policy in connection with Federal prisoners, is that right?

A. Yes.

Q. And that policy was what, as you recall it?

A. He stated that——

Q. That is the jailer stated? A. Yes.

Q. Go ahead.

A. He said that, in effect, that unless they wanted to let the attorney in that he was a Federal prisoner or something to that effect and——

Q. We'll stop there. Unless he wanted to let the attorney in——[275]

A. That he didn't have to, something——

Q. The jailer didn't have to? A. Uh-huh.

Q. Is that the way you understood him to remark?

A. That is the way I took it. I don't know whether that is right, but that is the way I understood——

Q. Well, what—if you know, why did the jailer come and tell you fellows that?

A. I don't know why he did that.

Q. He said, "There is an attorney out here that wants to see the defendant," is that right?

A. That's right.

Q. And then he went on to state that, "There is a policy in connection with Federal prisoners that

(Testimony of Edward J. Harkabus.)

I don't have to let their attorney in if I don't want to," is that right?

A. Something to that effect.

Q. Something to that effect. Well, you didn't want to see the attorney, did you?

A. Not particularly.

Q. Now, you went on with the interview, didn't you? A. Yes, for a few minutes.

Q. For approximately twenty — twenty-two — twenty-five minutes, didn't you?

A. Well, my recollection is that the interview had bogged down at that point and Mr. Pass went to discuss this matter [276] with Mr. Harris, the attorney, and we were more or less holding the interview in abeyance until he came back.

Q. You had, up to that time, been writing down some things Mr. Smith had been telling you, hadn't you? A. Yes, sir.

Q. In longhand? A. Yes, sir.

Q. You had Mr. Smith almost to the point where you thought he was going to sign something, didn't you? Now, just be honest with us.

A. I am trying to remember. Will you ask the question again, please?

A. You had Mr. Smith at that time almost to the point where you thought he might sign something for you, didn't you?

A. Well, he had already admitted his complicity in the check case.

Q. Well, to get back to the question, you had him to the point where you thought he was almost

(Testimony of Edward J. Harkabus.)

ready to sign this thing you had been writing on, didn't you?

A. Oh, no, sir, because no one can read my notes. I didn't anticipate him him signing that at all.

Q. Well, did you continue to prepare notes and interview Mr. Smith after the first announcement by the jailer?

A. Well, Mr. Pass had talked to the attorney is my recollection, and I don't know what he did say to him, but the attorney did [277] come in.

Q. Well, didn't you hear him talk with the attorney? A. No, sir.

Q. And you stayed with Mr. Smith, did you, while Mr. Pass was talking to the attorney?

A. Lt. Trafton and I were there with Mr. Smith.

Q. Talked with the attorney?

A. No, Mr. Nesbett, Mr. Pass talked to the attorney; Lt. Trafton and I were with Mr. Smith.

Q. Stayed with the defendant?

A. Yes, sir.

Q. But you couldn't overhear anything that Mr. Pass said to the attorney, is that right?

A. No, sir, I didn't.

Q. Did the jailer come in any more and make any more remarks about the defendant's attorney being around?

A. He came in again and said the attorney was still there and I suggested that Mr. Harris come in; that they let Mr. Harris come in and talk to Mr. Smith inasmuch as he was the attorney.

(Testimony of Edward J. Harkabus.)

Q. Was that after Pass had been out to see him?
A. Yes, sir.

Q. After Pass went out to see him, the attorney did not come back in, did he? The attorney did not follow Pass back in the room, did he?

A. Yes, he did. [278]

Q. Well, what was the occasion for your suggesting that he allow Mr. Harris to come in then?

A. Well, I thought it was a good idea, that's all.

Q. But if Pass was bringing him in and you didn't overhear what was occurring between Pass and the attorney, why was your suggestion that you made that he be brought in?

A. Well, one of us is confused, Mr. Nesbett, and possibly it's me, but my point was that, initially Mr. Pass had talked to the attorney and what the conversation was, I don't know. Mr. Pass came back and subsequently the jailer indicated that the attorney was there and then I stated, "I think it's a good idea for you to let him see him."

Q. All right. Now, when Mr. Pass came back, the attorney was not following him in?

A. He was.

Q. He was? A. On the second occasion.

Q. On the second occasion? A. Yes, sir.

Q. Did Pass go back out and get the attorney after you suggested that it would be a good idea to bring him in?
A. I believe he did.

Q. Well, then what was the occasion for the jailer coming back the second time?

(Testimony of Edward J. Harkabus.)

A. Well, you will have to ask the jailer; I don't know. [279]

Q. You don't know? A. No, sir.

Q. Mr. Harkabus, didn't it occur about like this: that during this interview the jailer came and said, "There's an attorney here who wants to see this defendant," and did you not reply to the jailer, "He can see him when we get thru with him"?

A. I have answered your question previously.

Q. Well, answer yes or no. A. No.

Q. Did the jailer not come back a second time after that and say, "This man's attorney wants to see him, and it's my belief that he has a right to see his attorney"? A. No, sir.

Q. And that you again answered he can see him when we get thru with him? A. No, sir.

Q. You did not? A. No.

Q. And that the next thing that occurred was that the jailer had the attorney standing in the door? A. That is not my recollection at all.

Q. You don't recall it that way?

A. No, sir.

Q. Well, it was about twenty minutes after the attorney was first announced that Mr. Pass brought him in then, is that [280] your testimony?

A. That's right.

Q. He got just as far as the door, didn't he—the attorney got just as far as the door, didn't he?

A. What door?

Q. The door entering into the interview room.

(Testimony of Edward J. Harkabus.)

A. He was within the door; he had entered the room.

Q. He just got inside the door, then?

A. Well, it wasn't—well, I don't know how far he had been in, but he was in the room.

Q. How far in the room?

A. Well, he was within three feet of Mr. Smith, I'd say offhand.

Q. And how long was he there?

A. Maybe ten minutes or so—fifteen.

Q. Did you talk with the attorney?

A. Did I talk with him?

Q. Yes. A. No, sir.

Q. Did you carry on your interrogation while the attorney was there? A. No, sir.

Q. You dropped that, didn't you? All of the officers dropped their interrogation, didn't they, while the——

A. Dropped it? [281]

Q. You discontinued your interrogation while the attorney was there, didn't you?

A. Well, the attorney was talking to Mr. Smith, so obviously——

Q. Well, can't you answer that, Mr. Harkabus? You discontinued your interrogation of Mr. Smith while the attorney was there, didn't you? (Pause.) You, yourself, didn't ask Mr. Smith any questions while the attorney was in there, did you?

A. I did not.

Q. Nor did any of the other officers, did they?

A. No, sir.

(Testimony of Edward J. Harkabus.)

Q. Now, the attorney asked Mr. Smith, "Do you want me to represent you," didn't he?

A. He did.

Q. And what did Mr. Smith say?

A. He asked him who had sent him.

Q. And who did the attorney say had sent him?

A. He said that his father, Oscar Smith, I believe his name is.

Q. Oscar Smith, the defendant's father, had sent him, Harris, down there, is that right?

A. Yes, sir.

Q. And what else was said?

A. When he asked Mr. Smith if there was anything that he could do for him, Mr. Smith replied, the defendant replied, that he didn't think so because he had in fact been implicated in [282] this situation and had confessed his complicity.

Q. Smith hadn't signed anything as yet, had he?

A. No, sir.

Q. So, the attorney left, didn't he?

A. There was a few more words between Smith and his attorney.

Q. Well, then the attorney left, didn't he?

A. Yes, he did.

Q. How—did it take ten minutes for all that to occur? A. Well, that is my recollection.

Q. Did anyone tell Mr. Smith that he could go out and see his attorney in private if he wanted to?

A. His attorney said, "Do you want to talk to me in private, Mr. Smith," and Mr. Smith replied, "No."

(Testimony of Edward J. Harkabus.)

Q. Was his attorney sitting down or standing up? A. He was standing up.

Q. And did the jailer make any remark to Smith about his rights?

A. Not to my recollection, no, sir.

Q. Did you tell Smith, "Go ahead, Smith, you can see your attorney if you want to"?

A. No, sir, I didn't.

Q. Did Pass do that?

A. I don't believe so.

Q. Or, did Trafton?

A. No, sir. He had previously been advised of his rights.

Q. Now, after the attorney Harris left, what then happened in [283] the interview room?

A. We continued to interview Smith for a short time.

Q. That went on for probably an hour and a half, or two hours afterwards, didn't it?

A. I don't believe so, no, sir.

Q. The result of this interview was that Mr. Smith signed some of these things you had been writing out in longhand, didn't he?

A. No, sir.

Q. Now, we get down to the point; didn't you have Mr. Smith sign some of those pages that you were writing on in your own handwriting in long-hand? A. I didn't, no, sir.

Q. You didn't? Who did?

A. Nobody did, to my knowledge.

Q. Nobody did? (Pause.) Is it your testimony

(Testimony of Edward J. Harkabus.)

that nobody had Mr. Smith sign something written in longhand there that day in that room?

A. That's my recollection, no, sir.

Q. Well, could anyone have had him sign something written in longhand there at that time without your knowing it? A. I doubt it.

Q. Then, in all probability your testimony is, is it not, that he didn't sign anything written in longhand there that day?

A. My recollection is that he did not. [284]

Q. How did this statement that has been offered as Exhibit 20 get to be typewritten?

A. I typed it.

Q. Where did you type it?

A. In the King County Sheriff's office.

Q. When?

A. Immediately after the interview with Smith.

Q. Was Mr. Smith with you at the time you typed it? A. I don't believe he was.

Q. Did you do all the typing yourself?

A. Yes, sir.

Q. Was Officer Pass and Trafton with you when you typed it? A. They were.

Q. And that would be the same day, Sunday?

A. Yes, sir.

Q. And when was it taken to Mr. Smith—was it taken to him? A. Yes, sir, it was.

Q. Where was he when it was taken to him?

A. I believe he was in the jail.

Q. The three of you took it to him up to his cell?

A. No, not to his cell.

(Testimony of Edward J. Harkabus.)

Q. Did you call him out of his cell?

A. I didn't, no, but he had been called out.

Q. Where was he called down to—where was he called?

A. He was called to the same place where the interview was [285] conducted there.

Q. And about what time of the day would that be?

A. I honestly don't know.

Q. Well, would it be late in the evening?

A. No, sir.

Q. Early in the evening? Was it before you had had dinner?

A. Oh, yes; in fact, it was in the afternoon.

Q. In the afternoon? And it was signed in the same interview room then, was it, that you had been in previously that afternoon with Mr. Smith?

A. I believe so, Mr. Nesbett.

Q. Did you say that you had read the statement over to Mr. Smith?

A. Yes, sir.

Q. Did you read it in its entirety to him?

A. Yes, sir.

Q. And I believe you also testified that he, himself, read it?

A. Yes, sir.

Q. Did he read it over page by page?

A. I am sure that he did, yes, sir, because he initialed several corrections on it.

Q. Were you there watching him to see that he read it all?

A. Yes, sir.

Q. Have you still got those notes you made?

A. That's a difficult question to answer for this reason: that [286] recently I was involved in a fire

(Testimony of Edward J. Harkabus.)

in Fairbanks, your Honor, where many of my records and what-have-you were water-damaged and fire-damaged and, very honestly, I don't know; it may be in salvage records, yes, sir.

Q. Well, you don't know whether your notes were destroyed in that fire or not, is that right?

A. That's right.

Q. Didn't you—don't you, as a rule, turn your notes in with your—with the statement?

A. Well, generally, I don't, no, sir.

Q. To whom did you give the statement then after it had been signed?

A. Well, it was given to Trafton and Pass.

Q. Did you keep a copy for yourself?

A. No, sir, I don't.

Q. And you don't know what happened to your notes?

A. Well, I am not sure of what happened to them, Mr. Nesbett.

Q. I am looking at Exhibit 20 for identification, Mr. Harkabus. I wonder if I could see the original? My photostat doesn't show very well. May I approach the witness, your Honor?

The Court: Yes, you may.

(Thereupon, Mr. Nesbett approached the witness.)

Q. (By Mr. Nesbett): Now, Mr. Harkabus, is this the statement that you typed, Exhibit 20? [287]

A. Yes, sir.

Q. You typed that yourself?

(Testimony of Edward J. Harkabus.)

A. Yes, I did.

Q. And you say you had Mr. Smith sign each page of it himself?

A. Yes, sir. I didn't have him sign it; he signed it.

Q. He signed it? A. Yes, sir.

Q. And in the presence of Trafton and Pass?

A. Yes, sir.

Q. Now, this was taken on a Sunday—that would be the 17th? A. Yes, sir.

Q. Do you know how the date 3/16/57 came to be written on the copy of this statement?

A. Do I know how?

Q. Yes. A. No.

Q. Where is that copy (talking to other defense counsel)? On the photostat that I got off the copy, there is handwritten the date "3/16/57."

Mr. Plummer: I don't think I have anything on that.

Q. (By Mr. Nesbett): I am showing you a photostatic copy of Exhibit 20 which was made during the noon hour, Mr. Harkabus. Do you see those figures up in the righthand corner "3/16/57"?

A. Yes, sir. [288]

Q. Do you recall those figures being written in on any copy of this Exhibit 20? A. I do not.

Q. You have no idea how they might have gotten there?

A. You have the original. That is the one I typed. I know nothing about the photostat, Mr. Nesbett.

(Testimony of Edward J. Harkabus.)

Q. The point I am making, Mr. Harkabus, this is a photostat copy that was given to us by the District Attorney and the figures are photostated as well as the typing. I was wondering if you knew how——

A. No, sir.

Q. How many statements were signed by Mr. Smith on that date?

A. I believe there might have been three copies.

Q. Of four pages each?

A. Yes, sir.

Q. And did you have him sign all three copies?

A. I believe he did sign all copies, yes, sir.

Q. And you deny vehemently, didn't you say, that he signed any of your handwritten statements or notes?

A. My testimony was that I don't recall that he signed any notes. I don't recall him signing my notes.

Q. Didn't you have him sign your notes, or what you had been writing out shortly after Attorney Harris had left the room and then later take these others in and tell him that they were just type-written copies of the statement he had already [289] signed?

A. Oh, no, sir.

Q. You didn't?

A. No, sir.

Q. Do you recall Officer Pass, during the interview on Sunday, speaking to Mr. Smith and saying, "You better make a statement"?

A. No, sir.

Q. You don't recall that early part of the interview?

A. I don't recall it.

Q. Do you recall Officer Pass later saying, "If

(Testimony of Edward J. Harkabus.)

you go ahead and make the statement it will go a lot easier with you"—just prior to Mr. Harris being announced?

A. Well, my recollection of anything along that line is this, Mr. Nesbett——

Q. Well, I'd like to have you answer that question.

A. Will you rephrase your question?

Q. I will have it read back to you.

(Thereupon, the Court Reporter read back the question on line 10 above.)

A. Your Honor——

The Court: This is cross-examination. You should answer the question yes or no.

A. Well, I'd say "no" then.

Q. (By Mr. Nesbett): Why did you hesitate? [290]

A. Well, I hesitated because that isn't what was said.

Q. What did Officer Pass say to him in connection with making a statement?

A. Officer Pass indicated to him that based on past experience, in the event that he made a statement and a full confession, undoubtedly, it would go easier with him. That was the full context of the remark made by Officer Pass.

Q. That is the context of what Officer Pass said, is that right?

A. I believe that is right, sir.

(Testimony of Edward J. Harkabus.)

Q. In other words, he said that in gist as best you recall? A. Yes, sir.

Q. You don't recall exactly what he said, do you?

A. No.

Q. You do not? A. No, sir.

Q. Mr. Harkabus, now, going back to Saturday afternoon at about 4:45, about fifteen minutes after you had arrived at the King County jail, or approximately that time——

The Court: Pardon me. My understanding was, it was on a Friday.

Mr. Nesbett: I'm sorry, your Honor, that is right; the testimony was Friday. I am glad your Honor reminded me.

Q. (By Mr. Nesbett): Are you sure it was a Friday or Saturday?

A. It was a Friday. [291]

Q. It was a Friday? A. Yes, sir.

Q. Did you see Mr. Smith at all on a Saturday?

A. I did not, no, sir.

Q. All right. Now, on Friday afternoon at about 4:45, or approximately fifteen minutes after you had arrived at the King County jail, you were in the room with Mr. Smith, that is right, isn't it?

A. Yes.

Q. And you had an opportunity to ask him two or three questions, is that right?

A. I asked him several questions.

Q. And then you left the room, is that right? Approximately half an hour after you had gone in?

(Testimony of Edward J. Harkabus.)

A. Well, it may have been longer. I am not positive.

The Court: What's the purpose of going all over this the second time, counsel?

Mr. Nesbett: Just laying the groundwork for one question, your Honor, that has been suggested to me and I couldn't ask the question out of the blue.

The Court: I appreciate that, but on the other hand, I thought I had the right to determine why you were going over that again.

Mr. Nesbett: Yes, sir. [292]

Q. (By Mr. Nesbett): Now, so after you had been in the room approximately thirty minutes, you left, is that right, Mr. Harkabus? A. Yes, sir.

Q. And to the best of your recollection you didn't go back, did you?

A. I don't believe I did, no, sir.

Q. And you don't know what happened or how long they were in the room after you left, do you?

A. Well, they weren't in there too long. I do know that because Lt. Wayland had to close his office.

Q. How do you know whether or not they were in there very long after you left?

A. Well, I was still at the King County jail. I testified to that, that I was in another room, in the chief deputy's room.

Q. Well, all right. If you are so aware and informed of the situation, how long were they in there after you left? A. I don't know.

Q. You don't know?

(Testimony of Edward J. Harkabus.)

Mr. Nesbett: That is all.

The Court: Very well. Any redirect, counsel?

EDWARD J. HARKABUS

testifies as follows on [293]

Redirect Examination

By Mr. Plummer:

Q. When did you next see——

Mr. Kay: Could I have a chance on cross? I just wanted to ask one question along that line?

EDWARD J. HARKABUS

testifies as follows on

Cross-Examination

By Mr. Kay:

Q. On Saturday then, I don't want to be repetitious at all, you didn't see Smith at all on Saturday?

A. I did not.

Q. Do you know whether Pass and Trafton did?

A. I believe they did.

Q. You don't know how long they saw him or what was said, of course, not being there on Saturday?

A. I wasn't there.

Mr. Kay: All right.

Mr. Plummer: Anybody else?

The Court: Now, you may proceed then.

EDWARD J. HARKABUS

testifies as follows on

Redirect Examination

By Mr. Plummer: [294]

Q. Did you, in fact, see Officer Pass and Lt. Trafton after you had left the cell or the interrogation room, or the defendant Smith after they were conducting their investigation on Friday afternoon?

A. I saw them, yes, sir.

Q. When did you see them?

A. I am not absolutely sure of the time, but I believe it would have been around six or so.

Q. And where? A. 6:30—around 6:30.

Q. Where did you see them?

A. Well, I believe it was in the office of Lt. Wayland of King County sheriff's office.

Q. So, they were at least out of there by the—about the time you mentioned?

A. I believe they were.

Q. Now, did Mr. Nesbett show you this copy with the "3/16/57" on it? A. He did.

Q. And it was your testimony you didn't know anything about it?

A. I didn't know anything about the photostat at all.

Mr. Plummer: I have no further questions.

The Court: Very well, you may step down.

Mr. Nesbett: May I ask one question, your Honor? It wasn't elicited by the redirect. I was wondering if your Honor [295] would give me per-

(Testimony of Edward J. Harkabus.)

mission to ask it in any event. It's based on the direct testimony.

The Court: Yes.

EDWARD J. HARKABUS

testifies as follows on

Recross-Examination

By Mr. Nesbett:

Q. Mr. Harkabus, I believe you said the defendant was arraigned in Seattle, did you?

A. Yes.

The Court: No.

Q. (By Mr. Nesbett): Did you say that——

Mr. Nesbett: I understood him to say he was.

A. He was.

Q. (By Mr. Nesbett): Well, that is where I was confused. He was arraigned in Seattle?

A. He was arraigned in Seattle.

Q. And on what day?

A. I believe it was the 18th.

Q. Were you present at the time?

A. I was—I believe the Commissioner requested——

Q. Were you present when—— [296]

A. Yes, sir.

The Court: To refresh your recollection, Mr. Nesbett, the testimony was he was arraigned here in Anchorage, before Warren Colver.

Mr. Nesbett: On March 21st?

The Court: Yes.

(Testimony of Edward J. Harkabus.)

Mr. Plummer: There was also testimony, your Honor, that he was arraigned, by this witness, that he was arraigned in Seattle on the 19th.

The Court: I didn't hear it.

Mr. Nesbett: I believe I better clarify——

The Court: Well, the record will speak for itself. It was my recollection that he was——

Mr. Plummer: After arrival back to Anchorage, but he was arraigned in Seattle. I believe the witness testified he was arraigned on the 19th of March in Seattle, prior to his departure from Seattle.

Q. (By Mr. Nesbett): Was that a Monday?

A. It was a Monday.

Q. That would be the 18th. Which Commissioner was he arraigned before?

A. John Burns, U. S. Commissioner in Seattle.

Q. John Burns? A. Yes, sir. [297]

Q. You were present? A. Yes.

Q. Was the——was any charge read to the defendant? A. Yes.

Q. What was the charge?

A. Uttering a forged instrument, I believe.

Q. There was a Complaint then in existence at that time?

A. I believe there was, Mr. Nesbett.

Q. That Complaint was read, was it?

A. Yes, sir.

The Court: He was represented by an attorney at that time?

Q. (By Mr. Nesbett): Harris was there then, wasn't he? A. Yes, sir.

(Testimony of Edward J. Harkabus.)

Q. And had extradition already been taken care of?

A. At that time, my recollection is that Mr. Smith's attorney, John Harris, made a motion to quash the waiver of extradition executed by Mr. Smith.

Q. Was the motion argued?

A. It was set for the 19th at 1:30 p.m.

Q. And when was the waiver of extradition signed? You were present when that was signed, weren't you?

A. No, sir.

Q. Weren't you? [298]

A. No, sir.

Q. Well, did Pass and Trafton take care of that?

A. I assume that they did.

Q. That was done on a Saturday, wasn't it, the day you weren't there?

A. Well, I don't know. I believe it was. Efforts were made to arraign him on that same date, according to Mr. Pass.

The Court: Now, what same date?

A. On the—it would have been on the 16th, your Honor.

The Court: I see.

A. I don't know that of my own knowledge. All I know is what I was informed.

Mr. Nesbett: That is what I was going to ask. I ask that it be stricken and your Honor disregard it. It's strictly hearsay. If Pass can take the stand and say that under oath, all right.

The Court: You asked the question, did you not?

Mr. Nesbett: No, I didn't; your Honor did.

(Testimony of Edward J. Harkabus.)

The Court: Read the record back.

(Thereupon, the Court Reporter read back lines 4 through 12 above.)

The Court: The Court didn't ask the question, you see.

Mr. Nesbett: Very well.

The Court: Let's take a recess. We have been in session well over an hour now. I would suggest, Mr. Johnson [299] (the Court Bailiff), that you have the jurors come in and take their places in the courtroom. How long do counsel think this might go on?

Mr. Plummer: We have two short witnesses and one witness that will be fairly lengthy and not as lengthy as Mr. Harkabus, however.

The Court: Well, now as to the fact that Mr. Pass and Lt. Trafton aren't here, won't counsel stipulate that they're not here and available?

Mr. Nesbett: Stipulate that they're not here?

The Court: Well, no, that they're not available.

Mr. Kay: I don't know that they're not available. The United States Attorney's office can subpoena a witness anywhere in the United States. I don't know whether they're inside the jurisdiction or not.

The Court: I don't know either, but I was hoping to conserve time on that basis. If you won't, of course, we will have to go along with it, but I assume that something of that nature you would

(Testimony of Edward J. Harkabus.)

know of your own knowledge and you'd be willing to stipulate to it.

Mr. Nesbett: I don't know, your Honor, and I am certainly not in a position to waive anything.

The Court: Very well, court will go into recess for a period of ten minutes.

(Thereupon, following a short recess, the court [300] reconvened, and the following proceedings were had out of the presence of the jury and the spectators:)

The Court: Were you through with this witness, Mr. Nesbett?

Mr. Nesbett: Yes, your Honor.

The Court: Very well. Mr. Kay?

EDWARD J. HARKABUS

testifies as follows on

Recross-Examination

By Mr. Kay:

Q. Just a few questions, your Honor. Mr. Harkabus, this proceeding in Seattle that occurred on Monday there, are you sure that was an arraignment or is it possible that it was a hearing on this question of extradition or something?

A. It was an arraignment.

Q. Do you recall if the bond was set?

A. It was \$10,000.00, at my recollection.

Q. Was there a Complaint there present in Seattle that was read at that arraignment?

(Testimony of Edward J. Harkabus.)

A. I believe there was, Mr. Kay.

Q. Were you present throughout the proceeding?

A. I was in the back portion of the Commissioner's Court. They indicated that they wanted us up there and I didn't know [301] exactly—(pause).

The Court: You may continue, Mr. Kay.

Q. (By Mr. Kay): You are, of course, aware of the difference between an arraignment and a—or, know what an arraignment is, do you not, Mr. Harkabus?

A. Yes, I do.

Q. From where you were standing in the courtroom, could you hear everything that went on in regard to the proceedings?

A. I believe I could hear it.

Q. Can you recall what went on?

A. It was an arraignment; that is my recollection and the bond was set and the defendant was informed of his rights and so forth. He was represented by an attorney at that time, Mr. Kay.

Q. And that attorney immediately raised the question, did he not, of extradition, and made this motion to quash the waiver of extradition that had previously been signed?

A. He did.

Q. And a date was set the following day or two days later for a hearing on that motion?

A. It would have been the 19th which was the subsequent date at 1:30 p.m.

Q. And then it's your testimony that the defendant was again arraigned here in Anchorage? [302]

A. Well, that—I think that your best record would be your Commissioner of Court records.

(Testimony of Edward J. Harkabus.)

Q. You don't know of your own knowledge whether he was arraigned again?

A. I'd been informed that he was, yes, sir.

Q. But of your own knowledge?

A. No, sir.

Q. Then you wouldn't be aware of any reason why he would be arraigned twice, if he was in fact arraigned twice? A. No.

Q. Where did this proceeding take place? Was it in the same building as the jail? A. No, sir.

Mr. Kay: That is all the questions I have.

The Court: Mr. Plummer, any redirect?

Mr. Plummer: No, your Honor.

The Court: Mr. Hepp?

Mr. Hepp: No questions.

The Court: Very well, then, you may step down, Mr. Harkabus.

(Thereupon, the witness left the witness stand.)

The Court: You may call the next witness.

Mr. Plummer: I would ask that the Court take judicial notice of its own files and see that on the Held to Answer papers that a Complaint was filed against this defendant on March 14, [303] 1957, and that the warrants did issue on that date.

The Court: Very well, motion is granted.

Mr. Kay: Just to satisfy my curiosity, would the Court file there also reveal the date of an arraignment here in Anchorage, Alaska?

Mr. Plummer: It does reveal.

The Court: You say "it does"?

Mr. Plummer: It does. The Held to Answer transcript that came up revealed what day he was arraigned and by whom. The reason I am sure is because I looked at the Commissioner's copies over the noon hour.

The Court: Mr. Kay, I point out to you that there is a Complaint signed the 14th day of March, 1957, by William T. Plummer and also by Warren C. Colver, Deputy United States Attorney (meaning Deputy United States Commissioner) in the file and bond set at \$10,000.00 on that date, and also——

Mr. Kay: That is a bond endorsed on the Complaint, is it?

The Court: That is correct. Then the commitment pending trial is signed on the 21st day of March; bail fixed at \$10,000.00.

Mr. Kay: Does the transcript here in this file show anything of the arraignment in Seattle?

The Court: Could you help me, Mr. Plummer?

Mr. Plummer: The transcript I saw down in the [304] Commissioner's Court over the noon hour did not mention any arraignment in Seattle.

Mr. Kay: That is all.

The Court: Very well. You may call your next witness.

Mr. Plummer: I'd ask that Jim Barkley be called.

The Court: For the record of counsel it shows that a warrant for Charles Edward Smith was issued the 14th day of March, 1957, and he was arrested at Seattle, Washington, on March 15, 1957. That may help you. You may proceed, counsel.

JAMES H. BARKLEY,

called as a witness for and on behalf of the Government, and being first duly sworn, testifies as follows on

Direct Examination

By Mr. Plummer:

Q. Would you please state your name, sir?

A. James H. Barkley.

Q. Your occupation?

A. Territorial Police Officer.

Q. And where are you stationed, sir?

A. Fairbanks, Alaska.

Q. Do you know a Lt. Trafton in Fairbanks, Alaska?

A. Yes, sir.

Q. And do you know—what is his occupation?

A. He is my commanding officer in Fairbanks detachment. [305]

Q. Do you know where he is at this time?

A. Japan.

Mr. Plummer: I have no further questions.

The Court: You may cross-examine.

JAMES H. BARKLEY

testifies as follows on

Cross-Examination

By Mr. Kay:

Q. Is he on vacation?

A. Yes, sir.

Q. When did he go?

A. I don't know the exact date. It's been approximately two or three weeks.

(Testimony of James H. Barkley.)

Q. You don't actually know, personally, that he is in Japan? I mean, you haven't seen him there?

A. No.

Q. You just know he is supposed to be in Japan?

A. That is correct, sir.

The Court: Any other cross?

JAMES H. BARKLEY

testifies as follows on

Cross-Examination

By Mr. Nesbett: [306]

Q. Is he still employed by the Territorial Police?

A. Yes, sir.

Q. Is he coming back to work in Fairbanks, or——

A. As far as I know, sir, yes.

Q. Have any charges been placed against him, to your knowledge, within the department?

A. Not to my knowledge, no, sir.

Q. Is he in command of the whole unit in Fairbanks?

A. Yes, sir.

Q. When is he expected back?

A. I don't know for sure what the length of his annual leave. I have heard it's the middle of April.

Q. How much annual leave do you officers ordinarily get with the department, Officer Barkley?

A. It varies; there's nothing—there's no set——

Q. Do you have thirty days of vacation a year or——

A. A year, yes, sir, thirty days annual leave per year.

(Testimony of James H. Barkley.)

Q. Has he been—did he leave the department three weeks ago, or, did you say he was in Japan two or three weeks ago the last you heard?

A. Left on his vacation.

Q. Two or three weeks ago? A. Yes, sir.

Q. And he will be back maybe in the middle of April?

A. To the best of my knowledge, yes, sir. [307]

Q. What is his rank? A. Lieutenant.

Mr. Nesbett: I believe that is all.

The Court: Any redirect?

Mr. Plummer: No, your Honor. I will advise the Court that I may call this witness on rebuttal. Of course, there is no way to anticipate, so I will ask that he be out of the courtroom.

The Court: Very well. You may be excused then.

(Thereupon, the witness left the courtroom.)

Mr. Plummer: Will you call Mr. Hibpshman?

EARL W. HIBPSHMAN,

called as a witness for and on behalf of the Government, and being first duly sworn, testifies as follows on

Direct Examination

The Court: You may proceed, counsel.

By Mr. Plummer:

Q. Will you please state your name, sir?

A. Earl W. Hibpshman.

Q. Occupation? A. Police officer.

Q. With the Anchorage City Police?

(Testimony of Earl W. Hibpshman.)

A. Yes, sir.

Q. What division? [308]

A. Detective Division.

Q. Do you know, sir, a Mr. Ted Pass?

A. Yes, sir.

Q. Is he still with the Anchorage Police Department?

A. No, sir, he is not.

Q. Do you know about when he severed relations with the police department?

A. Yes, sir, October 31, 1957.

Q. Do you know his present whereabouts?

A. I believe he is some place in North Carolina; I am not sure of the town, no, sir.

Mr. Plummer: I have no further questions.

The Court: You may cross-examine.

EARL W. HIBPSHMAN

testifies as follows on

Cross-Examination

By Mr. Nesbett:

Q. When did you last hear of Mr. Pass?

A. Sir, I have not heard of Mr. Pass since three or four days before his dismissal.

Q. How did you happen to know that he is in North Carolina?

A. Only by being told; I have seen no correspondence, sir.

Q. Is he confined in a mental institution there in North Carolina?

A. No, sir, not that I know of. [309]

(Testimony of Earl W. Hibpshman.)

Q. Has he been confined in any mental institution since he left the force, to your knowledge?

A. No, sir, not that I know of.

Q. Have you understood or heard that he has been?

A. No, sir.

Q. Do you know why he left the force?

A. Yes, sir.

The Court: Well, that is irrelevant and immaterial. He is not on trial.

Mr. Nesbett: Very well, your Honor.

The Court: Any other cross? You may step down then.

Mr. Plummer: No further questions.

(Thereupon, the witness left the witness stand.)

The Court: You may call your next witness.

Mr. Plummer: Call James E. Chenoweth. Just open the door. He is down in the Marshal's office.

JAMES H. CHENOWETH,

called as a witness for and on behalf of the Government, and being first duly sworn, testifies as follows on

Direct Examination

By Mr. Plummer:

Q. Will you please state your name, sir?

A. James H. Chenoweth.

Q. Occupation? [310]

A. Chief Deputy United States Marshal.

(Testimony of James H. Chenoweth.)

Q. I call your attention to, sir, to Criminal No. 3772, entitled *United States vs. James Ing and others*, and ask you, if you know, if a subpoena was issued for one Ted Pass, formerly with the city police, in regard to this cause?

A. Yes, sir, it was.

Q. And do you know, or if you know, will you tell us where this subpoena was sent and where it was served, if in fact it was served?

A. We sent the subpoena to the United States Marshal at Raleigh, North Carolina, for service upon Mr. Pass at Rocky Mountain, North Carolina.

Mr. Plummer: May I approach the witness, your Honor?

The Court: You may.

Q. (By Mr. Plummer): I ask you, sir, if you know whether or not the subpoena was served?

A. The Deputy Marshal at—in the area close to Rocky Mountain, North Carolina, went out to serve the subpoena on Mr. Pass. He did not serve it because Mr. Pass is under doctor's care at the present time. He wired the information to us and asked for instructions on the service of the subpoena, advising us in the same telegram that a physician's certificate would be forthcoming.

Q. Is that the telegram that you have there in front of you? [311]

A. Yes, sir, it is.

Q. Unless the Court or counsel want to look at it, or——

Mr. Kay: I'd like to inspect; I am not insisting that—but I would like to examine it.

(Testimony of James H. Chenoweth.)

(Thereupon, the document was inspected by Mr. Kay.)

Q. (By Mr. Plummer): And did you in fact receive such a certificate from the doctor?

A. Yes, we did.

Mr. Plummer: May I once again approach the witness?

The Court: You may do so.

Q. (By Mr. Plummer): I ask you, sir, if you can tell me what that is?

A. This is a letter from Dr. Stone which was sent to the United States Marshal at Raleigh, North Carolina, and he in turn forwarded it to us. This is the doctor that has Mr. Pass under his care.

Q. And would you tell us what in effect the letter says?

A. The letter says that Mr. Pass had been under the doctor's care for a period of approximately two weeks; that he had had during that period of time two severe convulsions at home; that he was presently being treated by that doctor with Thorazine and Dilantin sodium in order to control these seizures and the doctor stated, in his opinion, it would be inadvisable for the witness to undertake a trip to [312] Alaska at this time.

Mr. Plummer: I don't intend to offer this. I will show it to counsel. If they want me to, I will make such an offer.

The Court: Very well. Any cross-examination?

Mr. Nesbett: No questions.

Mr. Kay: No questions.

(Testimony of James H. Chenoweth.)

The Court: Very well. You may step down.

Mr. Plummer: May I give these to Mr. Chenoweth to return to his file?

The Court: They will be available in the event counsel needed them.

Mr. Kay: I wonder if I could just ask Mr. Chenoweth a question as he stands there?

JAMES H. CHENOWETH

testifies as follows on

Cross-Examination

By Mr. Kay:

Q. Have you been asked to serve a subpoena on Lt. William Trafton? A. Yes, sir.

Q. Did you make any effort to do so?

A. Yes, sir. Lt. Trafton is either somewhere in Hawaii, Tokyo, or East. He's been on vacation, or, he's taking annual [313] leave for a period of about five weeks and nobody knows exactly where he is.

Q. When were you asked?

A. I'd have to check the records. It was sometime during the normal course of the issuance of subpoenas in this case.

Q. What's that, a week, two weeks ago?

A. I'd say approximately two weeks ago, anyway, if my memory serves me correctly.

The Court: Any redirect, counsel?

Mr. Plummer: No, your Honor.

The Court: Thanks, Mr. Chenoweth. You may be excused.

(Thereupon, the witness was excused and left the stand.)

The Court: You may call your next witness.

Mr. Plummer: I'd like to call Stanley Laird.

STANLEY H. LAIRD,

called as a witness for and on behalf of the Government, and being first duly sworn, testifies as follows on

Direct Examination

The Court: You may proceed.

Mr. Nesbett: Your Honor, before he commences to question Officer Laird, I object to any of the testimony. Officer Laird has sat here all through the trial and I don't think it's proper. I don't know what phase of the case or statement he intends to question him on, but I don't think it's proper. [314]

The Court: Objection overruled. He may proceed.

By Mr. Plummer:

Q. Will you please state your name, sir?

A. Stanley H. Laird.

Q. Your occupation?

A. Territorial Police Officer.

Q. And you, in behalf of your department, worked this case for the Department of the Territorial Police, is that correct, sir? A. I did.

Q. And I ask you, sir, if you recall right before the noon recess today extracting a copy of a statement allegedly taken from Charles Edward Smith from your file and handing it to defense counsel?

(Testimony of Stanley H. Laird.)

A. I did.

Mr. Plummer: And may I approach the witness, your Honor?

The Court: You may do so.

Q. Is this a copy of the statement that you gave him at that time? A. It is.

Q. I see what appears to be a longhand notation up in the upper lefthand corner of the statement saying "3/16/57." Do you see that?

A. Yes, sir.

Q. Do you know who put that on the original, which is not available now, or on the copy that you gave them?

A. I put it on myself. It was for filing purposes. That was [315] the weekend or so of Pass going to Seattle to locate Mr. Smith.

Q. You had no knowledge of when the statements were actually taken? A. No, sir.

Q. The "3/16/57" did not refer to that in any way? A. No, sir.

Q. Do you know the defendant in this case, Charles E. Smith? A. Yes, sir.

Q. Did you have occasion, sir, to see him on or about March 27, 1957? A. I did.

Q. And where did you see him, sir (Pause.) Where did you see him, sir?

A. I saw him at the federal jail. We picked him up, Detective Pass and myself, between 10:20 and 10:30 a.m. of that date.

Q. And what, if anything, did the three of you do?

(Testimony of Stanley H. Laird.)

A. We took Mr. Smith with us and, to substantiate his statement, took him about Anchorage and had him point out the various stores and where he had let off Mr. Volk, and just going over the points of his statement.

The Court: Counsel, that doesn't have anything to do with the admissibility of this statement, though.

Mr. Plumber: Subsequent to the two arraignments, after; he certainly had been advised of his rights. He now says that the statement is true and it was voluntarily given, if in fact I [316] can elicit from this witness that he did so testify.

The Court: Excepting this, that is not relative to the admissibility of this statement itself. That is the only thing we are trying. It might be to the trial itself, but not to the statement.

Mr. Plummer: My point, your Honor, was, and I probably expressed it very poorly, if sometime after he had been advised of his rights, if he in front of this witness said that the statement was true, (1); and that it was given voluntarily with no threats or promises made to him, that certainly would tend to show that at the time the statement was given that condition also existed.

The Court: Well, I anticipate, maybe not rightly, counsel for the defense are going to raise objection that the statement is inadmissible because he was not timely arraigned, so, therefore, that would have no bearing upon—and I haven't talked to counsel about it. It's just obvious from

(Testimony of Stanley H. Laird.)

the testimony, so, whether it was voluntarily, involuntarily, accurate, or inaccurate, is unimportant at this point.

Mr. Plummer: Very good, sir. Then, I will probably at this time not waste further time of the Court with this witness. I am trying to figure out how I can renew my motion without Mr.—for submission—without Mr. Harkabus being here.

The Court: Well, of course, you could do that without—he's properly identified it now.

Mr. Plummer: All right, I ask that Mr. Laird be [317] excused for the time being then.

The Court: Is there any cross, counsel?

Mr. Nesbett: I was going to ask Mr. Laird a question or two.

The Court: I though maybe you had——

Mr. Nesbett: As long as it was touched on.

STANLEY H. LAIRD

testifies as follows on

Cross-Examination

By Mr. Nesbett:

Q. How, in the course of your filing procedure, Sergeant, would you get—would you have occasion to mark on a report of that nature “3/16/57,” such as you mentioned?

A. That was from Ted, sir, Ted Pass' reports and so on and compiling them in the folder is just to get continuity of papers, that's all, just the week

(Testimony of Stanley H. Laird.)

ends and so on. I don't know the exact date the statement was taken. In other words——

Q. That is what puzzles me. You couldn't have received it before, say, the 20th or 21st, could you?

A. No, sir, and the papers were not always—they were held in abeyance and were not—in other words—put into the folder until we were ready to get the thing in——

Q. Did Officer Pass bring it up to you or did he mail it to you?

A. He gave it to me about a week or so after he returned. [318]

Q. Now, that is the point, Sergeant; how then, a week later, did you happen to write "3/16/57" on that statement?

A. I was just going by his daily report.

Q. Did you read a daily report? Did something in the report give you the idea that it was taken on the 16th?

A. It was just the period of time, sir, just the period of time that he had gone down to Seattle to contact Mr. Smith, or, arrest, Mr. Smith.

Q. Well, after you did write "3/16/57" on the statement then, where in your filing cabinets would you put it in order to be able to go back to it with respect to that date?

A. It's in my folder during the month or the week of—everything is listed in dates and by date and it was just as a figure of speech. I just took an arbitrary figure and, assuming it was on or about the 16th. I didn't know.

(Testimony of Stanley H. Laird.)

Q. Didn't you take the figure, though, that represents the date from Lt. Pass'—from whose records? Trafton's?

A. Lt.—or, it was Detective Pass'.

Q. Detective Pass' records; something you saw in his records made you write "3/16/57," wasn't there?

A. I was just assuming, sir; I was just assuming; I didn't ask him. I was filing the papers and getting them in continuity. That was all. The figure didn't mean anything at all.

Q. You have trouble going back and finding your files? [319]

A. No, sir.

Mr. Nesbett: That is all.

Mr. Plummer: I have no further questions.

The Court: You may step down.

(Thereupon the witness left the witness stand.)

The Court: Now, you may call your next——

Mr. Plummer: I, at this time, offer what has been marked for identification only as Plaintiff's Exhibit No. 20 into evidence.

The Court: Is there objection?

Mr. Kay: Yes.

Mr. Nesbett: Yes, your Honor, there is objection and I, of course, want to call the defendant as a witness with respect to the statement.

The Court: Very well, you may come forward, Mr. Smith, and take the stand.

CHARLES E. SMITH

called as a witness for and on behalf of the defendant, and being the defendant, and being first duly sworn, testifies as follows on

Direct Examination

Mr. Nesbett: As I stated, your Honor, Mr. Smith is being called simply for the purpose of determining the admissibility of this statement and no others.

The Court: That is in conformance with the practice. [320] You may proceed.

By Mr. Nesbett:

Q. Your name is Charles E. Smith, and you are a defendant in this case, are you not?

A. That is right.

Q. And you sat in court here throughout the trial?

A. Yes.

Q. Now, were you in Seattle on about March 15, 1957?

A. Yes, I was.

Q. Were you arrested on that date?

A. Yes.

Q. Now, will you—about what time of day were you arrested and where were you when it occurred?

A. I was at my folks' house. It's 115—no; 11815 78th South, and I would say it was around 3:00 o'clock.

Q. In the afternoon?

A. Yes.

Q. Do you recall what day it was?

A. I believe it was a Friday.

Q. Now, state what happened at the place at that time?

(Testimony of Charles E. Smith.)

A. I was just talking to someone on the phone and there was a knock on the door and my mother answered the door and somebody asked if I was there and she said "no," so they just pushed her aside and came in the house.

Q. Did you know who that was? [321]

A. I learned later it was the sheriff of Seattle.

Q. And did you learn later that his name was Wayland, or Weeland?

A. Yes, I did.

Q. Who else was with him?

A. I believe Detective Pass was, or, Marshal Pass.

Q. Do you recall any other persons who were with him?

A. No.

Q. Did you see Lt. Trafton?

A. Yes, I did.

Q. Well, was he with the sheriff?

A. Well, they was all together, but the only two to come inside the door was Mr. Pass and that sheriff.

Q. Now, where were you in the house at the time they came in?

A. I was right by the phone.

Q. Did either of those persons make any statement to you when they came thru, past your mother?

A. The sheriff said that I was under arrest.

Q. Did he tell you why you were under arrest or for what?

A. No, he didn't.

Q. Did the sheriff show you a warrant?

A. He didn't show me nothing.

(Testimony of Charles E. Smith.)

Q. Did you—were you ever presented with a warrant? A. No, I wasn't.

Q. What happened then?

A. Well, they took me down to Seattle Federal jail there. [322]

Q. I'll ask you this, before you go on with the story: did you see Mr. Harkabus there at that time? A. Yes, I did.

Q. Where was Mr. Harkabus?

A. He was with them.

Q. Did he come in the house?

A. Not in the house.

Q. Did he stay outside the house?

A. Yes, sir.

Q. Do you remember which door they came in?

A. They came in the back door.

Q. Was Mr. Harkabus near the back door, or do you know, when they went out?

A. When I come out, they was all right together there, real close.

Q. All right. Where were you taken?

A. Seattle Federal jail.

Q. Would that be the King County jail there?

A. I believe it would be.

Q. What was done with you there?

A. Well, I went in this sheriff's office there and Pass and I believe Harkabus and that sheriff was there.

Q. Was Lt. Trafton there?

A. Yes, Lt. Trafton, too.

Q. Are you sure Harkabus was there? [323]

(Testimony of Charles E. Smith.)

A. He was there right from the beginning.

Q. All right. What happened in this office?

A. Well, he started asking me questions about this M-K check deal.

Q. And did you give him any answers to those questions? A. No, I didn't.

Q. How long were you in that office?

A. I'd say around three hours.

Q. And was Harkabus there during that period of time?

A. He was there right at the start.

Q. And how long did he remain there, if you recall? A. Not too long.

Q. Did the others, any of the others, remain after Mr. Harkabus left?

A. Mr. Pass did and Mr. Trafton.

Q. Mr. Pass and Mr. Trafton remained?

A. Yes.

Q. During the entire three hours you say you were there? A. Yes.

Q. What was being said and done in the office during those three hours?

A. They wanted me to sign, I don't know what they call it, but something saying they could take me back up to Alaska.

Q. Well, would it be something to do with extradition? A. Yes. [324]

Q. Does that sound familiar? A. Yes.

Q. Did you sign it?

A. Well, not at first, but—

Q. Did you eventually sign it?

A. I did; right at the end I signed it.

(Testimony of Charles E. Smith.)

Q. Now, did Mr. Pass or Mr. Trafton or Mr. Harkabus ever talk to you about your right to have an attorney, or in fact, did anything—that anything you said might be used against you?

A. No, they didn't.

Q. During that entire session?

A. No, they didn't.

Q. Are you positive of that?

A. I'm positive.

Q. Did they ask you to sign any written statements other than this extradition paper at that time?

A. No, they didn't.

Q. Did you, during the course of that interview, at the end of that three hours, make any admissions of your connection with the M-K matter?

A. No, I didn't.

Q. Where did you sign this paper in connection with extradition?

A. That was in the sheriff's office.

Q. Was that on the same day you were brought in?

A. Same evening, yes. [325]

Q. About what time in the evening did you sign it?

A. That must have been around 6:00—6:30.

Q. Did you know what you were doing when you signed that paper? Did you know the effect of it?

A. All I know I wasn't going to get no sleep until I signed it, I guess, so I signed it.

The Court: Just answer the question now.

Q. (By Mr. Nesbett): Well, did you know the

(Testimony of Charles E. Smith.)

effect, what they expected to accomplish by getting your signature on that paper?

A. No, I didn't.

Q. Did you—did they mention something about bringing you back to Alaska in connection with the paper?

A. I believe Detective Pass said he was going to bring me back to Alaska.

Q. Did you know that signing that paper would permit him to bring you back without legal proceedings? A. I didn't then.

Q. You found that out later, did you?

A. Yes.

Q. Now, what—after you signed the paper, what was—what happened to you?

A. They took me back to my cell.

Q. And were you in a cell with other prisoners or alone? A. I was alone. [326]

Q. And how long were you in the cell there?

A. Well, that night—all that night and next day; I'd say about four days, I guess, altogether, four or five days.

Q. Well, you went in on a Friday, didn't you?

A. Yes.

Q. Were you in a cell all day Saturday the following day? A. Yes.

Q. And were you taken out at all during that day?

A. Detective Pass and Mr. Trafton, they come and talked to me.

Q. Where did they talk to you?

(Testimony of Charles E. Smith.)

A. There's a little room up there from the cell where, I don't know what they call it, something like an anteroom; everybody talks there.

Q. About what time of the day did they come to talk to you? A. About around noon.

Q. How long did that talk last?

A. About an hour.

Q. What was the nature of that talk?

A. They was asking me a bunch of questions about this M-K checks.

Q. Did you at that time make any admissions or statements that would connect you with this M-K matter? A. No, I didn't.

Q. What happened to you after that interview came to an end?

A. They took me back to the cell. [327]

Q. How long did you remain in the cell then?

A. Until Sunday.

Q. Until Sunday, and about what time Sunday?

A. I'd say around 12:30.

Q. Were you taken out at that time on that date? A. Yes, I was.

Q. Where were you taken?

A. I was taken back to that room again, the anteroom.

Q. Did you see any people in that room?

A. There was Mr. Harkabus and William Trafton and Detective Pass.

Q. What happened in that room then?

A. Well, Mr. Pass told me that I better make a statement.

(Testimony of Charles E. Smith.)

Q. Well, is that all he said?

A. Well, he told me—he just told me.

Q. What was his attitude when he told you that you better make a statement?

Mr. Plummer: I object to what his attitude was.

The Court: Objection sustained. This is on direct examination.

Q. (By Mr. Nesbett): What was the occasion for Detective Pass telling you that you better make a statement? What were the circumstances under which he made the statement?

A. He told me that—when I first went in there, he told me [328] I better make a statement so he'd get back up North and wouldn't be down there too long.

Q. Well, did you make a statement right then?

A. No, I didn't.

Q. Was Harkabus taking any part in this conversation? A. Yes, he was.

Q. Was Lt. Trafton taking any part?

A. Very little.

Q. Now, how long were you in the room with those people? (Pause.) Approximately, on that date? A. I'd say around three hours.

Q. Around how long? A. Three hours.

Q. During the course of the time you were in that room, did any attorney attempt to visit with you? A. Yes, he did.

Q. About how long after you had been in the room did this happen?

A. I'd say around two and a half hours.

(Testimony of Charles E. Smith.)

Q. And how did you learn that an attorney was attempting to see you?

A. Well, the jailer there, he came in the room there and said there was an attorney out there to see me.

Q. And did you or anyone in connection with this interrogation make any remark? [329]

A. Mr. Harkabus, he said that he could see me when he got done with me.

Q. Do you know who Mr. Harkabus was talking to when he said that? A. The jailer.

Q. Did the jailer make any remark to Mr. Harkabus? A. Not at that time, he left.

Q. Did you learn that the attorney made later attempts to see you?

A. The jailer come in again, oh, I'd say around fifteen minutes.

Q. And what did the jailer say on that occasion?

A. He said that I had a right to see an attorney and an attorney was wanting to see me.

Q. Did Mr. Harkabus, Lt. Trafton, or Detective Pass make any remarks at that time?

A. Mr. Harkabus, he said they was about done, that he'd see me in a few minutes.

Q. Did the jailer make any statement at that time? A. He left him in.

Q. Now, did the jailer make any other remarks in connection with you in seeing your attorney?

A. He did say that I had a right to see him, or that he said—he was talking to Mr. Harkabus when

(Testimony of Charles E. Smith.)

he said this, he said "he has a right to see his attorney"; that's all he said.

Q. Who said that? [330] A. The jailer.

Q. Was he talking to Mr. Harkabus?

A. He said it at Mr. Harkabus.

Q. Was that before or after Mr. Harkabus said, "The attorney can see him when we get through with him"? A. That was afterwards.

Q. Now, did you in fact see your attorney there-after?

A. Oh, about ten minutes later, he was standing right in the doorway there.

Q. Now, during this ten-minute interval, the attorney appeared before—the attorney appeared. Did Detective Pass go out for purposes of talking to the attorney to your knowledge?

A. Not to my knowledge.

Q. Do you know who brought the attorney to the door when you saw him?

A. I know that he was with the jailer; that is the only one I know that he was with.

Q. Did he come inside the room very far?

A. No, just to the doorway.

Q. And did the attorney make any remark when he came to the door?

A. He asked me if there was anything that I wanted to see him about.

Q. Did the jailer make any remark prior to the attorney's statement? Did the jailer announce the attorney or did [331] he——

A. Oh, yes, he—when he come up there, he said,

(Testimony of Charles E. Smith.)

“This is Mr. Harris” and my dad had sent him down for me.

Q. Did Mr. Harkabus, or Mr. Pass, or Mr. Trafton make any statement in response to the statement of the jailer? A. None then.

Q. Were you all sitting down?

A. All but Mr. Trafton; I believe he was standing.

Q. Did any of those three people you were with in the room make any statement when the jailer said, “Here’s the attorney that your father sent down”? A. No, they didn’t.

Q. The attorney then made the statement to you that, was there anything he could do for you, is that right? A. Yes.

Q. Did you—were you still at the table or sitting down, rather? A. Yes.

Q. Were you sitting at the table with Harkabus as he testified? A. Yes, I was.

Q. Did—what did you say, if anything, to the attorney then? A. I said, “No, there wasn’t.”

Q. Did you want to see your attorney, or the attorney at that time?

A. Well, I didn’t want to cause no trouble so I just—they [332] was just about over with, so I said, “no.”

Q. How long had you been in the room at that time?

The Court: It’s already been testified to, counsel.

(Testimony of Charles E. Smith.)

Mr. Nesbett: Was it two and a half hours, your Honor?

The Court: Yes.

Q. (By Mr. Nesbett): And how long had it been since your attorney had been announced?

A. I would say mighty close to a half hour.

Q. Why didn't you, or, rather, I'll ask you this: did Harkabus or any of them say, "Well, you can go out and talk to your attorney if you want to"?

A. No, they didn't.

Q. Did anyone tell you that you had a right to confer with that attorney in private?

A. No, they didn't.

Q. Had you signed anything up to that time?

A. No, I hadn't.

Q. Were you ready to sign anything?

A. Yes, I was.

Q. Now, Mr. Smith, did you in fact sign something that day?

A. Yes, I did.

Q. Do you know what you signed? What was it?

A. I signed a statement written up by Mr. Harkabus.

Q. How was it written up, if you recall? [333]

A. It was just written on plain paper.

Q. Was it written—typewritten or longhand?

A. It was just written in longhand.

Q. How long after your attorney, the attorney left did you sign this statement, approximately?

A. Right away.

Q. Was the statement already written up at that time then?

A. Yes.

(Testimony of Charles E. Smith.)

Q. Had Mr. Harkabus been writing then on the statement during this entire interview?

A. Yes, he wrote it all.

Q. Do you recall what was at the top of that statement?

A. Well, I thought it said that "this statement will not be used against you."

Q. Was that, to your recollection, was that statement written in handwriting on the top of the statement? A. Yes, it was.

Q. Had Harkabus been questioning you in connection with some fire loss in addition to the M-K matter? A. Yes, he was.

Q. Was any typewritten statement given to you on that day to sign?

A. There was a little later.

Q. I see. Was that the statement that has been presented to the Court here? [334] A. Yes.

Q. Where did you sign that statement, if you recall?

A. They brought me out of my cell and back in that room again.

Q. And about how long after the afternoon was it when your attorney called, was it, that they brought this other statement to you?

A. Oh, around an hour.

Q. Are you positive you had previously, however, signed the handwritten statement of Harkabus? A. Yes.

Q. Did you—were you told by Harkabus or any of them that you needn't make any statement if

(Testimony of Charles E. Smith.)

you didn't want to? A. No, I wasn't.

Q. Were you told by them that prior to the commencement of the Sunday meeting that you were entitled to an attorney and needn't make any statement? A. No, I wasn't.

Q. Why didn't you get up and demand to see your attorney at the time he stood in the door there and asked you if he could do anything for you?

A. Well, I already—the statement was just made out, you know, and everything was done but it was just signed and I didn't want to cause any trouble; it was just about over with.

Q. Did Detective Pass make any statement to you in connection [335] with what might happen to you if you went ahead and signed the statement and cooperated?

A. He told me if I would cooperate that he would see that it was known up here.

The Court: Mr. Nesbett, please don't lead the witness now; even if the Government doesn't object I will have to. I want to do the best I can for this defendant, but I don't want you to ask leading questions to determine that. Let this witness testify what is determined, please.

Q. (By Mr. Nesbett): Mr. Smith, about what time of the day then was it that you signed this typewritten statement?

A. I would say around five, something like that; maybe five-thirty. It would be hard to say.

Q. That was on a Sunday, was it?

A. Yes, it was.

(Testimony of Charles E. Smith.)

Q. What was then done with you?

A. After I signed?

Q. Yes.

A. I was taken back to my cell again.

Q. How long did you remain in the cell?

A. Well, until they called me up for, some place, to see about some extradition.

Q. Do you know where you were called and on what day it was that you were called? [336]

A. No, I don't.

Q. Well, what happened when you were called up this next time in connection with extradition?

A. Well, there was a room full of people there and Mr. Harris was there.

Q. Who is Harris? Was he the attorney?

A. My father got, yes, sir.

Q. What happened in that room full of people?

A. I guess they was talking about extradition because they never did ask me nothing. I just——

Q. Were any statements made to you in that room by anyone?

A. Not to my knowledge.

Q. Was there a judge, someone sitting there, an authority?

A. Yes, there was.

Q. At a desk?

A. Yes, there was.

Q. Did that person make any statement to you during that hearing?

A. Not to me.

Q. Did that person make any statement in connection with any charge against you?

A. No, he didn't.

Q. Well, what was the nature of the hearing?

(Testimony of Charles E. Smith.)

A. I believe it was extradition.

Q. What did Harris do there for you? Why was he there, do you know? [337]

A. Well, he was talking about something that they arrested me wrong or something like that, and they didn't give me no counsel or nothing like that. He was going to fight extradition.

Q. How long were you in the room?

A. Oh, about half an hour.

Q. Were you, during that time you were in that room, advised that—was a Complaint read to you charging you of having to do with these checks, forging them?

A. No, there wasn't.

Q. Did you sign anything in your room?

A. No, I didn't.

Q. What next happened to you?

A. Well, they took me back to my cell again.

Q. And how long were you in the cell that time?

A. Oh, I believe a day or—either one day or two days.

Q. Then what happened to you?

A. We got on a plane and came up to Anchorage.

Q. Where did you go in Anchorage?

A. They took me down to federal jail.

Q. When did you see anyone or have occasion to leave the federal jail after you had arrived?

A. Mr. Pass come and got me.

Q. And when, with respect to the time of your arrival?

A. Oh, about two days, I believe, something like that. [338]

(Testimony of Charles E. Smith.)

Q. Were you ever taken before a U. S. Commissioner here? A. Yes, I was.

Q. Were you informed of the charge or complaint read to you? A. Yes, I was.

Q. And were you advised of your rights on that occasion? A. Yes, I was.

Q. Were you asked about preliminary hearing?

A. He just asked me if I wanted to waive it.

Q. What did you say?

A. I signed the slip and signed "yes."

Q. How long were you in the federal jail here before you were released on bail?

A. I'd say around ten days; I don't really know.

Q. Were you in jail during the time that these witnesses have testified that you rode around town with them, identifying the places that you——

A. Yes, I was.

Q. Have you read this typewritten statement that has been offered in evidence?

A. Yes.

Q. You did read it, didn't you? A. Yes.

Q. Do you recall ever having read that full statement ever before?

A. The front first paragraph there is a little mixed up to my [339] notion.

Q. Is that your signature on the pages?

A. Yes, sir.

Q. When they took you out of your cell the second time on Sunday to look at that statement, I will ask you did you read that statement over in full before you signed it?

(Testimony of Charles E. Smith.)

A. I probably just glanced through it and just signed it to be done with it; that's all.

Mr. Nesbett: I believe that is all, your Honor.

The Court: Very well. You may cross-examine, Mr. Plummer.

CHARLES E. SMITH

testifies as follows on

Cross-Examination

By Mr. Plummer:

Q. Mr. Smith, was—did you testify in response to a question of Mr. Nesbett's, that the only way you would ever get any sleep was to sign a waiver of extradition?

A. Yes, I did.

Q. And what time was it of the day that you signed it?

A. I'd say around six.

Q. Six in the afternoon?

A. Six in the evening, yes.

Q. Do you usually go to bed before that time, do you? [340]

A. No.

Q. Now, did your attorney, that is, Mr. Harris, when he came to your cell there, did he—did you make any request to talk to him alone?

A. No, I didn't.

Q. Did he advise you that you could talk to him alone?

A. No, he didn't.

Q. Did anybody prevent you from making such a request?

A. No, they didn't.

Q. Were you frightened in front of Detective Pass and these people to request that?

(Testimony of Charles E. Smith.)

A. Well, it was all done; there was so much argument before that I thought, well, I better just do it and be done with it.

Q. Had they made any threats to you of any kind? A. No.

Q. May I have Plaintiff's Exhibit No. 20? May I approach the witness, your Honor?

The Court: You may.

(Thereupon, the exhibit was handed to Mr. Plummer and he then approached the witness.)

Q. (By Mr. Plummer): I wonder, Mr. Smith, is that your signature there? A. Yes, it is.

The Court: He so admitted that, counsel, if you so recall. [341]

Q. (By Mr. Plummer): I wonder if you'd just read that first paragraph.

A. (Reading): "I, Charles Edward Smith, residing at 11815 78th Avenue, South, Seattle, Washington, hereby make the voluntary signed statement to Special Deputy, United States Marshal Ted Pass, and Lt. William W. Trafton, Dept. of Territorial Police. I have been advised of my right to counsel, that I need not make a statement and any statement that I do make may be used against me in a court of law. No threats or promises, or any form of duress have been used to induce me to make this statement."

Q. Fine. Now, that as a matter of fact, you just said were your rights explained to you?

A. They never explained nothing to me. The

(Testimony of Charles E. Smith.)

first ones I signed there was four papers written up in his own handwriting.

Q. Well, you signed this, though, didn't you?

A. Yes, he brought this later.

Q. Well, did you—had anybody explained your rights to you?

A. No, they didn't, not at that time.

Q. Well, had they ever? You said in your statement that they did. Had they?

A. It says in this statement at the top of it, yes.

Q. Well, had they? A. No, they hadn't.

Q. Well, now, your attorney had been there. Did you tell him [342] that nobody had explained your rights to you?

A. He never said too much to me because he was arguing with Mr. Harkabus and Ted Pass for keeping him out.

Q. Well, you testified that he was in there, didn't you?

A. Yes, I did. He came in on his own.

Q. Did you ask him what your rights were, or tell him that your rights had not been explained to you? A. No, I didn't.

Q. And you didn't ask for a private appointment with him or anything like that?

A. No, I didn't.

Q. Well, if you were concerned about your rights that these people had been threatening you, would it be natural, sir, to assume that you would have mentioned it to him?

A. I just didn't know that.

(Testimony of Charles E. Smith.)

Q. This statement was typed and signed—typed and at least presented to you for signature after seeing your attorney? A. Yes, it was.

Q. Now, when did you first become acquainted with the nature of the charges against you, sir?

A. Well, he mentioned them Saturday.

Q. Now, on Saturday didn't they mention them to you at the time that they arrested you?

A. No, they didn't.

Q. What did you think they were arresting you for? [343] A. I had no idea.

Q. Did you inquire?

A. I asked them and they just smiled at me; they just went to their cars and that's it.

Q. They just smiled at you? A. Yes.

Q. I wonder if I could inspect the Court's file for just a minute?

The Court: You may.

(Thereupon, Mr. Plummer began to inspect the Court's file.)

Mr. Plummer: What I'm trying to find in here, your Honor, is the original return and—of the warrant.

The Court: I'm sorry; I can't help you, counsel.

Mr. Plummer: I don't even know whether they're kept in the file. I think it would be. (Pause.) I don't want to waste the time of the Court, but I am——

The Court: Well, you may be able to give it to

(Testimony of Charles E. Smith.)

the In-Court Deputy, maybe she could help you while you are examining on something else.

Q. (By Mr. Plummer): Now, was it your testimony, Mr. Smith, that at the time that the officers came to the house you were as a matter of fact in the house; that is, at your parents' home in Renton, Washington?

A. That they come in the house? [344]

Q. That at the time that they arrived there, that you were at home inside the house?

A. Yes, I was home.

Q. And where were you inside the house?

A. I was talking to him on the phone.

Q. They were outside at the door, though?

A. They was talking to me—see, they talked to me all the way up there. This fellow explained to me up there that they can talk to you right from the patrol car, so, they talked to me right at the last second.

Q. You are positive at the time that they knocked on the door that you weren't in the closet?

A. No.

Q. Had you just been in the closet?

A. No.

Q. Did you just go into the closet?

A. No.

Q. And is it your testimony, sir, that you were never arraigned while in Washington?

A. Not to my knowledge.

Q. Is your testimony that you have not—were not arraigned while in Washington, sir?

A. (Pause.)

(Testimony of Charles E. Smith.)

Q. Let me ask you, sir, if you ever appeared on February 21st, before a Mr.— [345]

The Court: You mean "March," don't you, counsel? It apparently is an undisputed fact that he was not arrested until March 15th, therefore, he could not have been arraigned in February.

Mr. Plummer: I am trying to—I am sorry, your Honor, I have the wrong document here. I am——

Mr. Nesbett: I think Mr. Plummer is looking at Walker's papers.

Mr. Plummer: I am—I was trying to make heads and tails out of it and I couldn't—that was probably the reason. May I have just one more minute, your Honor?

The Court: You may. Let's get the jury back down and excuse them. There is no use keeping them any longer, Mr. Johnson (Court Bailiff), please. It's now 4:30 and it's obvious that the balance of the day will be consumed in this problem. Could we start at 9:00 o'clock tomorrow morning? Tomorrow is naturalization ceremonies and we will not be able to start this trial until 10:30. The next morning the Court is committed at 8:00 o'clock for two hours on another problem. It looks like we will have to plan a night session as much as I dislike it.

(At this time, the jurors were brought back into the courtroom by the Court Bailiff.)

The Court: Let the record show all the jurors are back and present in the court. Ladies and gentlemen of the jury, this proceeding has taken consider-

(Testimony of Charles E. Smith.)

ably longer than [346] anticipated by counsel and the Court. It is obvious that we cannot conclude today, and, therefore, I do not want to keep you any longer. Without objection, then, you are now excused to report tomorrow morning at the hour of 10:30. Bear in mind, tomorrow morning we have naturalization ceremonies which this Court must conduct and we will not be able to resume the trial before 10:30, at the earliest. As you know, I must instruct you not to discuss this case among yourselves nor are you permitted to let others discuss it with you. You may now be excused. The Court will remain in session.

· (At this point, the jurors left the courtroom.)

The Court: Let the record show all the jurors are absent from the courtroom. You may now proceed, Mr. Plummer.

Q. (By Mr. Plummer): Now, Mr. Smith, do you deny that on the 19th day of March, you appeared before the Commissioner, a Mr. John A. Burns, down in Seattle and at that time you were accompanied by your attorney, Richard D. Harris, and that the Commissioner read the charge in the Complaint and explained it to you? Do you deny that at this time?

A. If he did, I don't remember.

Q. Do you deny that he did it?

A. There was so much junk going on there, I don't remember what the heck happened.

Q. Well, you remember apparently the last part

(Testimony of Charles E. Smith.)

of the proceeding, [347] I guess, from your testimony; was that right what happened after they finished reading the Complaint to you and advising you of your rights? Wasn't Mr. Harris along with you at that time? A. Up in——

Q. In front of the Commissioner.

A. Yes, he was there. He did all the talking; in fact he did everything. I just sat at the desk.

Q. Did the Commissioner do any of the talking?

A. He was talking to Mr. Harris. I was sitting back with my dad and mother.

Q. Do you deny that the Commissioner read the Complaint to you and advised you of your rights on the 19th day of March, in the Commissioner's Court in Seattle, Washington?

A. The only thing they was arguing up there that I know was about that extradition.

Q. I ask the Court to take judicial notice of its own files and especially that item in the file marked "Record of Proceeding of Criminal Cases," the report of the proceedings in front of the United States Commissioner, John Burns, which is opened in the file. I have no further questions.

The Court: Motion is granted. You may proceed, Mr. Smith—or, Mr. Nesbett, on recross—or, redirect.

Mr. Nesbett: Could I see that file, your Honor?

The Court: Yes, I have marked it for your convenience. [348] Let's take a little recess.

Mr. Nesbett: I have no other questions, your Honor.

(Testimony of Charles E. Smith.)

The Court: Very well, then.

Mr. Kay: I would like to ask a question. I am not sure what my status is in asking.

The Court: That is the point. I was going to call your attention to it. I doubt if you would have the right, counsel.

Mr. Kay: Well, I certainly represent a separate defendant here who has an interest in this statement because there are some hearsay statements contained in the statement and I think I have a perfect right to inquire as to whether or not the circumstances—I only want to ask a couple of questions which may or may not be objected to; I don't know.

The Court: What is your position, Mr. Plummer?

Mr. Plummer: I have no objection.

The Court: Very well, you may proceed.

Q. (By Mr. Kay): Mr. Smith, you were sitting here in court this morning when Mr. Harkabus testified, were you not?

A. Yes, I was.

Q. Did you hear Mr. Harkabus state that at the jail on, I believe, Sunday, that Pass, Officer Pass, made the statement to you something like this: "Based on past experience, if [349] you make a full confession it will go a lot easier with you." Did you hear Mr. Harkabus so testify?

A. Yes, I did.

Q. Did Pass make such a statement to you, either that, or similar to it?

A. Well, made one similar to it.

Q. Can you recall what the gist of the statement

(Testimony of Charles E. Smith.)

or the exact words or close to the words that Pass used?

A. Well, he told me, I believe, that if I would cooperate, that it would go easier on me.

Q. Did Officer Pass' statement so made to you at that time influence you in any way in making your statement?

A. Well, I made it right after that.

The Court: Any redirect?

CHARLES E. SMITH

testifies as follows on

Recross-Examination

By Mr. Plummer:

Q. You had had a chance to see your attorney, Mr. Harris, of course, before making the statement and before signing the statement, hadn't you?

A. The statement was already made before I seen Mr. Harris.

Q. Typed and presented to you?

A. Pardon? [350]

Q. Was it typed and presented to you?

A. No, it wasn't.

Q. By the time it was typed up and presented to you and you finally got around to signing it, you had had an opportunity to see Mr. Harris?

A. Yes, I did.

Q. Fine.

The Court: Very well. You may step down.

(Thereupon, the witness left the witness stand.)

The Court: You may call your next witness, Mr. Nesbett. Did you have another question?

Mr. Nesbett: No, I have no other witnesses, your Honor.

The Court: Very well. Then I will hear argument of counsel.

Mr. Kay: We were about to take a recess. Let's take a short one before we argue.

The Court: I want to finish this up today, counsel, as you can see the need for it. How much time—five minutes? Will that be sufficient for you? The court will go into recess for a period of five minutes.

(Thereupon, following a short recess the following proceedings were had:)

The Court: For the sake of the record, I don't know whether it's necessary or not, but I at this time renew my offer [351] into evidence, Plaintiff's Exhibit No. 20.

The Court: Very well.

Mr. Nesbett: And I object to the admission in evidence, your Honor, upon several grounds * * *.

(Thereupon, following argument presented by Mr. Nesbett, the Court sustained the objection. After remarks by Mr. Plummer, the following proceedings were had:)

The Court: Very well, the ruling of the Court will stand. The trial of this case will be continued

until tomorrow morning at the hour of 10:00 o'clock a.m. and this court will stand adjourned until tomorrow morning at the hour of 9:00 a.m. when this court will conduct naturalization proceedings.

(Thereupon, at 5:10 o'clock p.m., February 24, 1958, court was adjourned to the next morning, this case to be resumed at 10:30 o'clock a.m., February 25, 1958.) [352]

The Court: The Court will apologize to counsel, litigants, and to the jurors. As you know, we had naturalization ceremonies this morning; thereafter we were invited over to the Loussac Library for a cup of coffee put on by the Anchorage Women's Club. I feel it's the duty of the Court to support those people in their endeavors, the same as it is to be here in court all the time, and, as you know, we follow a rather strenuous and a rather rigid conduct of court work here, so it's nice to get away for just a few minutes. I hope you will understand.

Will counsel stipulate that all the jurors are back and present in the court?

Mr. Plummer: Yes, your Honor.

Mr. Kay: So stipulate.

The Court: Very well. You may call your next witness, Mr. Plummer.

Mr. Plummer: Before we do that, your Honor, I would like to forward to the bench a proposed instruction which has been submitted and receipted for by counsel.

The Court: Mr. Kay.

Mr. Kay: I would like also at this time, your

Honor, to hand up four proposed instructions on behalf of the defendant, James Ing, which have been served on the United States Attorney.

The Court: Thank you.

Mr. Kay: I may have others, of course. The situation [355] of the case is rather uncertain at the moment and we are prepared to argue at lease.

The Court: Mr. Johnson, I think it's unduly warm in here.

Deputy Clerk: Everyone has complained.

The Court: Suppose we did this, open up the doors for a just a moment. Maybe we could open up the back doors. Will you receipt these so we will have some time on them.

Mr. Plummer: I understand that Mr. Kay will have me sign for a copy of them so that it will be in order.

Mr. Kay: As long as the record shows they have been served on the United States Attorney's office I will later present a frontispiece for all of them. I didn't want Mr. Plummer to have to sign all of them.

The Court: Very well.

Mr. Plummer: Before we begin our proceedings, I do not see anybody in the courtroom that's a possible Government witness with the exception of Mr. Clifford Judd. He's been under subpoena, released from subpoena, but it may be necessary to call him again and for that reason I request that he absent himself from the courtroom.

The Court: Mr. Judd——

Mr. Kay: I'd like for the record to show that

this is the same witness that sat in court an hour at a previous day's hearing and I would, therefore, object in any event in accordance with the rule. I would merely not say I object; I merely call [356] the rule to the Court's attention. That occurred on—what was it? At the Log Cabin on Monday.

The Court: Mr. Judd, it's been requested that you be excused for the time being. Would you please absent yourself from the courtroom?

Mr. Plummer: I see nobody else, your Honor, in looking over the crowd that could be a possible Government witness. I think I know all of them by now. Is there anybody in the courtroom who is under subpoena from the Government? (No response.)

The Court: Very well. You may call your next witness then.

Mr. Plummer: I ask that the Bailiff call Mr. Eli Williams.

ELI WILLIAMS,

called as a witness for and on behalf of the Government, and being first duly sworn, testifies as follows on

Direct Examination

The Court: You may proceed, counsel.

By Mr. Plummer:

Q. Will you please state your name, sir?

A. Eli Williams.

Q. And where do you reside, sir?

A. Where do I reside?

(Testimony of Eli Williams.)

Q. Where do you live, sir? [357]

A. 18th Street.

Q. Do you have a street address or one that you use?

A. 1015.

Q. And how long have you resided there, sir?

A. About four years.

Q. Were you living there over the Labor Day week end of 1956?

A. Yes.

Q. And you have resided there continuously from that time until now?

A. Yes.

Q. Now, were you in the Anchorage area during the Labor Day week end of 1956?

A. Yes.

Q. And were you at the address just mentioned?

A. That's right.

Q. Do you know the defendant in this case, Raymond Wright?

A. Yes, I do.

Q. Did you have occasion to see Raymond Wright over the Labor Day week end of 1956 in Anchorage?

A. Yes, he was at my house.

Q. Would you tell me where you saw him, sir?

A. I saw him in my kitchen.

Q. And did he, that is, Raymond Wright, stay at your house over that week end?

A. Yes, he stayed at my house. I saw him a couple of times. [358]

Mr. Plummer: I have no further questions.

The Court: Any cross? (Pause.) Mr. Hepp.

ELI WILLIAMS

testifies as follows on

Cross-Examination

By Mr. Hepp:

Q. Mr. Williams, how long have you known Raymond Wright?

A. I have been knowing Raymond Wright about 20 years or longer.

Q. Has that been a business or just a social friendship? A. Just friendship.

Q. Do you have occasion to see Mr. Wright frequently or at what intervals?

A. No, only when he comes in.

Q. Does he come down often?

A. No, he been—before the recent time he have come down a few times.

Q. Does he use—to your knowledge, does he stay at your place when he comes to Anchorage?

A. That is where he stays, live at my place.

Q. That is what you said?

A. Yes, that is where he lives, at my place, when he comes to Anchorage.

Q. How does he gain entrance to your place? I think you stated that you saw him in your kitchen? [359]

A. Well, he got the key to my house. He come there any time, if I don't be there or not.

Q. I see. Well, referring to this Labor Day visit, was there anything different in his stay than as in any other time that he came down and stayed at your place? A. No.

(Testimony of Eli Williams.)

Q. Will you state, if you know, why he was down here then?

A. Well, I didn't know why he was down. He just come in when he comes in; he never did say anything; just visit me every time he come in and got the key and stay at my house, that's all.

Q. Did he do any act or have any meetings with anybody or furtiveness that caused you to believe that this was a different situation than other visits that he had made? A. No.

Mr. Plummer: Object.

The Court: What is your objection, Mr. Plummer?

Mr. Plummer: He first has asked his opinion. He asked, did he do anything furtive?

The Court: Did he what?

Mr. Plummer: —do anything furtive, or any meetings; completely outside the scope of the direct. If he wants to call Mr. Williams, as a witness, let him call him. It has nothing to do with the direct and can't in any way check this man's memory or anything else as to the events. [360]

Mr. Hepp: May it please the Court, I think the matter has come up here before as to a witness testifying if he knows something and I have objected on many occasions about laying a foundation to find out how a witness may know something and it's been consistently overruled, so I suppose that in this instance if he knows any of these things, he can testify; if he doesn't, he can say so.

Mr. Plummer: I will rely on the record. I will

(Testimony of Eli Williams.)

ask the Reporter to read back the question. If the word is "if you know"—if there is any question, I will withdraw my objection.

The Court: Very well. The Court Reporter may read the question asked by counsel for the defense.

(Thereupon, the Court Reporter read back the question on page 360, line 12.)

Mr. Plummer: I renew my objection.

The Court: Objection sustained.

Mr. Hepp: I will rephrase my question and ask you to answer it, if you know?

A. I know what?

Q. (By Mr. Hepp): If you know of your own knowledge, did Mr. Wright do any act, have any meetings, or display any conduct which caused you to believe that there was anything furtive or different in his visit this time, the time that we are referring to, over the Labor Day, than any other of the visits that he [361] had with you when he came to Anchorage?

Mr. Plummer: I object to this witness telling what he believed. He can tell what he saw and heard. I object to anything he might have believed.

The Court: Objection sustained as to his belief, but he may testify as to what he saw and heard.

A. Well, I didn't see anything with Raymond.

Q. (By Mr. Hepp): Nothing unusual about this visit at all? A. No.

Mr. Hepp: I have no further questions.

The Court: Any redirect, Mr. Plummer?

Mr. Plummer: No, your Honor.

The Court: Very well. May this witness be excused?

Mr. Plummer: As far as the Government is concerned, he may be.

The Court: Very well.

(Thereupon, the witness was excused and left the stand.)

The Court: Call your next witness.

Mr. Plummer: I ask the Bailiff to call Mr. Ronald W. Lovely.

RONALD W. LOVELY,
called as a witness for and on behalf of the Government, and being first duly sworn, testifies as follows on [362]

Direct Examination

The Court: You may proceed, counsel.

By Mr. Plummer:

Q. Will you please state your name, sir?

A. Ronald W. Lovely, L-o-v-e-l-y.

The Court: Thank you.

Q. (By Mr. Plummer): What is your present occupation and employment?

A. I work for Morrison-Knudsen.

Q. How long have you been employed by them, sir?

A. 15 years.

Q. And what is your capacity and job title with the company?

(Testimony of Ronald W. Lovely.)

A. My job title is administrative superintendent for Contract 1787.

Q. And what is the general type of work being done by your company under Contract 1787?

A. We are subcontractors for construction of certain military communications facilities in the Territory of Alaska.

Q. And were the operations under Contract 1787 taking place during the fall of 1956, sir?

A. Yes, sir.

Mr. Plummer: I ask that this be marked for identification.

The Court: It may be marked as No. 21. You have two, do you, counsel?

Mr. Plummer: Yes, sir. [363]

The Court: 21 and 22 then for identification purposes only.

Mr. Plummer: Would you make sure your tag doesn't cover this water mark there. May the record reflect that I am showing Plaintiff's Exhibits for identification only 21 and 22 to counsel.

The Court: Very well.

Mr. Plummer: May I have Exhibits 1 through 19.

(The exhibits were handed to Mr. Plummer.)

Mr. Plummer: May I approach the witness, your Honor?

The Court: You may.

Q. (By Mr. Plummer): Mr. Lovely, as supervisor of the administration project 1787, I'll ask you to look at Exhibits 1 through 19 and also at 21

(Testimony of Ronald W. Lovely.)

and see if you know the party whose signature purports to be in the lower right-hand corner, one Guy M. King? A. Yes, I do.

Mr. Plummer: Your Honor, I see that Mr. Williams is back in the courtroom and although he's been on and off the stand, I wonder if he should be in here.

The Court: I don't know, counsel, because I don't know whether you intend to call him.

Mr. Plummer: We do not intend to recall him.

The Court: What's the position for counsel for the defense? [364]

Mr. Nesbett: Which Williams is that, your Honor?

The Court: The man that just testified.

Mr. Kay: We don't intend to call him.

The Court: Very well, Mr. Williams, you may remain in the courtroom then. Thanks for calling it to the Court's attention.

Mr. Plummer: Will you read back the last question I asked Mr. Lovely?

(Thereupon, the Court Reporter read back question line 13 and answer line 17, page 364.)

Q. (By Mr. Plummer): And did you know Mr. King when he was an employee of your company in 1956? A. Yes, sir.

Q. And what was his capacity?

A. His capacity was site clerk.

Q. Would you tell us, if you know, what his

(Testimony of Ronald W. Lovely.)

authority was to draw checks on funds of the Morrison-Knudsen Company on Contract No. 1787 administered by the company?

A. As site clerk he was authorized by our treasurer in Boise, Idaho, on my request; in other words, I requested the treasurer to authorize him to sign checks on their behalf.

Q. And in what manner were the checks procured that were to be signed by Mr. King?

A. The checks to be signed by Mr. King were furnished by our [365] Anchorage headquarters office.

Q. Now, as administrative superintendent, did you have anything to do with these checks that might have been sent to Mr. King?

A. Yes, it was my responsibility to obtain and distribute the checks to the authorized individuals as they were needed.

Q. Was there any other way, other than through you, that Mr. King and other site persons could obtain checks to be used?

A. Not on official M-K checks, no.

Q. Now, as superintendent of administration for Contract 1787 do you have in your custody the books and records pertaining to the financial bookkeeping transactions of Contract 1787?

A. Yes, sir, I'm custodian.

Q. Now, as part of such bookkeeping records, does your office maintain a record of the number of checks which have been used by the Morrison-

(Testimony of Ronald W. Lovely.)

Knudsen Company and paid to the First National Bank of Anchorage, Alaska?

A. We maintained a complete inventory of all the checks.

Q. Now, I call your attention again to Plaintiff's Exhibits 1 through 19 and 21, which are the twenty checks involved in this case, and I call your attention that the serial number which appears on the right-hand side of the check are all in the eight thousand series and the nine thousand series, and ask you to consult your records, if you must, and answer me [366] whether or not your company checks in the eight thousand series and the nine thousand series have been paid by the First National Bank of Anchorage, Alaska?

A. The series in which these particular checks fall have all been accounted for except two.

Q. Would you tell us what those two are, sir?

A. One is check No. 8408 which was issued to John M. Scott in the amount of \$86.50. This check has never been cashed by the bank. Check No. 8321 issued to a man by the name of Allen W. Klinky in the amount of \$93.30 was lost and replaced by voucher check on November 15, 1957. That check was supposedly destroyed.

Q. Now, Mr. Lovely, will you look at what's been marked for identification only as Plaintiff's Exhibit No. 22 and tell me what it is, if you know?

A. The point of identification——

Q. Well, first tell me what it is, if you will, sir?

A. Is this the one?

(Testimony of Ronald W. Lovely.)

Q. Yes.

Mr. Plummer: May I approach the witness, your Honor?

The Court: Yes, you may.

A. This is a regular payroll check issued with the signature of Guy M. King at our site 22 at Galena on July 3, 1956.

Q. Now, I wonder, sir, if you'd take what's been marked for identification, known as Plaintiff's Exhibit No. 22 and check [367] it against the objects that you have in front of you and marked Plaintiff's Exhibits 1 through 19 and 21 and tell me the difference, if there is any difference, between the two exhibits?

Mr. Kay: I think that is invading the province of the jury, your Honor, to inspect and compare unless Mr. Lovely is shown to be an expert in some regard and there has certainly been no foundation for any expert testimony. As far as we stand right now anybody in the courtroom is just as well able to compare these checks as Mr. Lovely and, certainly, that is a question for the jury to determine as to whether or not there are points of comparison and points of difference.

The Court: Well, of course, that is true; on the other hand, if he knows there is any difference he may testify as to what he knows of his own knowledge.

Mr. Plummer: Certainly can testify to what he sees.

Mr. Kay: Anybody could testify if he was per-

(Testimony of Ronald W. Lovely.)

mitted to by the Court, but I shouldn't think that a person who is not an expert would be allowed to testify as to matters which are just common appearance.

The Court: Counsel, the testimony of this witness is that he is the man who procured all of the checks that went to Job 1787.

Mr. Kay: Right.

The Court: Now, he might have some personal knowledge. [368]

Mr. Kay: If he does that is different, but just a matter of comparing these checks from the witness stand is what I was objecting to because it seemed to be unnecessarily time consuming job and should be left for the jury.

The Court: Mr. Lovely, don't answer that question unless you know because you have not been qualified to be an expert in this field.

A. Only through association, sir.

The Court: Well, please proceed. That is up to counsel for the Government.

Q. (By Mr. Plummer): Would you first look at Plaintiff's Exhibit No. 22 and tell me what distinguishing marks it has that you know of as a valid M-K payroll check which was used on 1787?

A. First of all, the first most noticeable thing is the water mark in the paper which is distinguishable from both sides which bears the name Morrison-Knudsen Company and a circle which is the M-K decal just below it.

(Testimony of Ronald W. Lovely.)

The Court: Pardon me. What is a water mark, Mr. Lovely?

A. The water mark is an insignia that is printed into the paper for identification purposes.

Mr. Plummer: His Honor knows. He wanted to make sure that the jury all knew, Mr. Lovely.

Q. (By Mr. Plummer): Now, would you look at No. 22 and tell me if there are any [369] other distinguishing marks on it?

A. Yes. For one thing, the Exhibit 22 has a basket weave in the paper on both sides except that space where the identification mark is, whereas, the others have horizontal parallel lines.

Q. Now, will you look at Plaintiff's Exhibits 1 through 19 and 21 and tell me if the water mark is on that that you mentioned appears on those drafts?

A. The watermarking is definitely different. It has an arrowhead watermark.

Q. And to answer my question, does the M-K watermark appear on there?

A. In 15 years with Morrison-Knudsen I have never known them to use an arrowhead watermark.

Q. Now, will you see if the basket weave design you mentioned appears on Plaintiff's Exhibits 1 through 19 and 21?

A. No, this check seems to have horizontal parallel lines which are broken by what seems to be an arrowhead at intervals of about an inch and a half or an inch and a quarter apart.

Q. All right, Mr. Lovely, again I direct your

(Testimony of Ronald W. Lovely.)

attention to Government's Exhibits 1 through 19 and 21 and ask you to inspect them and ask you if they were authorized or prepared by your company to be issued under Contract 1787?

A. No, sir, they were not issued by my company for the reason that most of these checks could not have been issued by Guy M. King at our Galena site because the checks were never [370] issued to that site. I have here a record of the checks in the series 8,001 to 8,500 were issued to the Galena site and bear the signature of Guy M. King. Series 8,501 to 9,000 were issued to our site Number 2 at Big Mountain which is on the south shore of Lake Iliamna and would have been signed by C. A. Wilson, who is our authorized site clerk at that location. Checks No. 9,001 to 9,500 were issued to our site Number 9 at Aniak and our authorized signature there was David D. Field. Checks No. 9,501 to 10,000, inclusive, were issued to our Site 8 at Cape Lisburne. Right offhand I do not know who the authorized signature was there, but it was not Guy M. King.

Q. Now, I wonder, Mr. Lovely, if you would compare the serial numbers on the checks which have been marked for identification as Plaintiff's Exhibits 1 through 19 and Exhibit 21 and advise me if they are true M-K checks which have been paid and charged against the Morrison-Knudsen Company for these checks?

A. Plaintiff's Exhibit No. 22 has been paid by

(Testimony of Ronald W. Lovely.)

the bank. It is an official M-K check and bears the perforation of the bank.

Q. I was wondering about 1 through 19 and 21?

A. 1 through 19 and 21 have never been charged to our account by the bank and they do not bear the bank perforation.

Q. Would you look at the checks 1 through 19 and 21 and tell me what date appears as the date the checks were made? [371]

A. I see the date August 21, August 29, August 15, August 22.

Q. Well, do you see any earlier than August 22, 1956? Are there any of the exhibits that bear a date earlier than August 22, 1956?

A. I believe there was one for August 21.

Q. Any earlier than August 21?

A. No, sir.

Q. Now——

A. Beg your pardon. There is one for August 15 here.

Q. I am sorry. A. None earlier.

Q. Do you know where Mr. Guy M. King was employed by your company—was he employed by your company at that time, sir?

A. Yes. On July 25 Mr. King was transferred into our Anchorage office.

Q. And I take it then he was no longer at the job site in Galena during the period to which these checks appear to have been dated?

A. No, sir.

(Testimony of Ronald W. Lovely.)

Q. All right. Is Mr. King still with your company? A. No, sir.

Q. Will you tell us when he terminated his employment, if you know?

A. He was transferred to another contract the latter part of August. [372]

Q. Do you know where he is at present, sir?

A. No, sir, I do not.

Q. Now, Mr. Lovely, as site clerk was G. M. King authorized to use a stamp signature?

A. No, sir, we never used stamp or facsimile signatures at all on Contract 1787.

Q. Would you look at Plaintiff's Exhibits 1 through 19 and 21 and see if that appears to be a signature by G. M. King or a stamp signature?

Mr. Hepp: I object to that. I don't think there is any showing that this witness is qualified as an expert to determine whether a signature is stamped or, for that matter, Guy M. King's signature. He hasn't even stated that he has ever seen King's signature.

The Court: Objection sustained.

Q. (By Mr. Plummer): Mr. Lovely, are you familiar with the signature of Guy M. King?

A. Yes, sir.

Q. Have you seen it over the course of business, his business as site manager on 1787, up at Galena numerous times?

A. Yes. Preliminary to his being authorized he signed the signature authorization card which I for-

(Testimony of Ronald W. Lovely.)

warded to the treasurer in Boise, Idaho, to have him authorized to sign.

Q. And you have seen checks signed by him subsequent to his employment? [373]

A. Yes, sir.

Q. Now, I'll ask you if you will look at the Exhibits 1 through 19 and 21 and ask you if that appears to be the signature of Guy M. King?

A. It appears to be. It's rather shaky. It isn't as bold and firm a stroke as his signature, however, it does appear to be, at least, a copy of his signature.

Q. Now, I will ask you, sir, as supervisor of administration, if you will check the serial numbers on Plaintiff's Exhibits 1 through 19 and 21 against your records and see if in fact your company, Morrison-Knudsen Company, Inc., issued other checks bearing those same serial numbers which were charged against your company?

A. Here is a check No. 8893 which appears to be Exhibit 9. This check supposedly was made to—the check was made payable to Wendell R. Ware. The true check number 8893 which was paid by the bank on July 2, 1956, was made payable to Charles E. Gibson and was signed by C. A. Wilson at our Site 2. Check 8895, which is Exhibit 10, made payable to Wendell R. Ware; the official check 8895, which was paid by the bank on July 6, 1956, was made made payable to Loren F. Napp and signed by C. A. Wilson at our Site No. 2. Check Number 8903, which is Exhibit 1, made payable to James C. Woods; the official check was Number 8903 which was paid by

(Testimony of Ronald W. Lovely.)

the bank on July 16, 1956, was made payable to James A. Clark and [374] was signed by C. A. Wilson. Exhibit No. 19 is Check No. 8924 made payable to Theodore Williams; official Check No. 8924 which was paid by the bank on August 10, 1956, was payable to Clement C. Cane and signed by C. A. Wilson. Check No. 8927, which is Exhibit No. 14, payable to Theodore Williams; true Check No. 8927 which was paid by the bank on July 9, 1956, was made payable to Loren F. Napp and signed by C. A. Wilson.

Q. Would you just continue to do that until you run through the—— A. Okay.

Q. (Continuing): ——list of exhibits?

A. Check No. 8941, which is Exhibit 21, made payable to Wendell R. Ware; true Check 8941 which was paid by the bank on July 3, 1956, was payable to Paul W. Rebb and was signed by C. A. Wilson. Check No. 8965, which is Exhibit No. 11, made payable to Wendell R. Ware; official Check 8965 which was paid by the bank on July 16, 1956, was payable to Micheal A. Rikeroff and signed by C. A. Wilson. I notice that some of these numbers are hard to read on this.

Q. On those if you will say the first two digits or whatever you can read and say the next number indistinguishable and then the last number.

A. Exhibit No. 13 appears to be Check No. 9005 payable to Thomas A. Brown; official Check 9005 was paid by the bank on August 5, 1956, was payable to Lyle Thomas and was signed by David D.

(Testimony of Ronald W. Lovely.)

Fields. Exhibit No. 16; Check No. 9008, payable [375] to Thomas A. Brown; official Check 9008 which was paid by the bank on July 5, 1956, was made payable to David D. Fields, signed by David D. Fields and counter-signed by Jack Neubauer, who was the site superintendent and authorized to counter-sign. Exhibit No. 2, Check No. 9012, is made payable to James C. Woods; official Check 9012 which was paid by the bank on July 7—pardon me, it was paid on March 7, 1956, was made payable to Bobby McKinley and was signed by David D. Fields. Check No. 9015 is Exhibit 17 and was made payable to Thomas A. Brown; official Check 9015 which was paid by the bank on March 7, 1956, was made payable to Evan Wacilli and was signed by David D. Fields. Check No. 9051, which is Exhibit 6, was made payable to James C. Woods; official Check No. 9051, which was paid by the bank on March 22, 1956, was made payable to John R. O'Toole and was signed by David D. Fields. Check No. 90—blank—6, which is Exhibit 7, was made payable to James C. Woods. I am not sure that this is the same check, however, it is 9056, was paid by the bank on March 27, 1956, was made payable to Russell J. Stoiman and signed by David D. Fields. Check 9057, which is Exhibit 18, payable to Thomas A. Brown; official Check 9057, which was paid by the bank March 27, 1956, was made payable to Sylvester Taylor and signed by David D. Fields. Check 9065, which is Exhibit 5, was made payable to James C. Woods; official Check 9065, which was

(Testimony of Ronald W. Lovely.)

paid by the [376] bank on March 27, 1956, was made payable to Dennis A. Short and was signed by David D. Fields. Check 9073, which is Exhibit 15, was made payable to Thomas A. Brown; official Check 9073, which was paid by the bank on April 3, 1956, was made payable to Robert Harrimore and signed by David D. Fields. Check No. 9078, which is Exhibit—

The Court: May I help you, if I can.

A. (Continuing): —which is Exhibit 8, was made payable to Wendell R. Ware; official Check 9078 was made payable to the bank on March 27, 1956, was made payable to Michael Oskas and signed by David D. Fields. Check No. 9089, which is Exhibit 12, was made payable to Thomas A. Brown; official Check 9089, which was paid by the bank on April 30, 1956, was made payable to David D. Fields and signed by David D. Fields. That appears to be all that I can match up. There are two left here but the check I have left doesn't match either one of them.

Q. Could you have mistaken or could you—did you check Plaintiff's Exhibit No. 21, sir, for identification only—did you check Plaintiff's Exhibit No. 21 for identification only and try and match it up?

A. Plaintiff's Exhibit 21?

Q. Yes, sir.

Mr. Nesbett: He did.

The Court: That is the one that is not enclosed, I [377] believe, Mr. Lovely.

(Testimony of Ronald W. Lovely.)

Mr. Plummer: That would be 22. That's the valid check.

The Court: I see.

Mr. Plummer: Very good. At this time, your Honor, I offer into evidence Plaintiff's Exhibit No. 9 for identification, which has been marked for identification only, Plaintiff's Exhibit 21 and Plaintiff's Exhibit 22.

The Court: Is there objection? (Pause.) Without objection it may be admitted—

Mr. Kay: Just a moment until we check, your Honor.

The Court: All right. Very well. Well, No. 9, of course, has been submitted to you sometime ago, also 21 and 22.

Mr. Kay: I have no objection, your Honor.

The Court: Very well, it may be admitted then without objection.

Mr. Nesbett: I am sorry. Just a moment.

The Court: Very well, the Court will reserve its decision pending further investigation by counsel for the Defendant Smith.

Mr. Nesbett: I would like to ask the witness a question or so, your Honor. May I have Exhibits 9 and 21 and 22?

The Court: Very well, you may hand them to counsel, please, 9, 21 and 22.

(Thereupon, the exhibits were handed to Mr. Nesbett.)

Mr. Plummer: May I approach the witness, your Honor? [378]

(Testimony of Ronald W. Lovely.)

The Court: You may. Any objection, Mr. Nesbett?

Mr. Nesbett: These, your Honor—no.

The Court: It may be admitted then and marked Exhibits 9, 21 and 22, specifically, then.

Q. (By Mr. Plummer): Now, Mr. Lovely, will you tell me whether Plaintiff's Exhibits 1 through 19 and 21, which you have inspected here, were ever in the possession of your office, of your company?

A. No, sir.

Mr. Plummer: I have no further questions.

The Court: You may cross-examine.

RONALD W. LOVELY

testifies as follows on

Cross-Examination

By Mr. Nesbett:

Q. Mr. Lovely, was Mr. King discharged from the employment of M-K Company?

A. No, sir, he was transferred to our other contract, 1859.

Q. That occurred in August or September of 1956, did it?

A. Latter part of August, I believe it was.

Q. Is he still with the company?

A. No, sir, he is not.

Q. When did he leave the employment of the company?

A. I'm not sure, sir. I don't know when he left the other [379] contract because that isn't part of my responsibility.

(Testimony of Ronald W. Lovely.)

Q. But you did learn that he was no longer with the company, is that right? A. Yes.

Mr. Nesbett: I have no further questions.

The Court: Any other cross?

Mr. Gore: Yes.

The Court: Mr. Gore.

RONALD W. LOVELY

testifies as follows on

Cross-Examination

By Mr. Gore:

Q. Did you state the date upon which Mr. King was transferred from the job site into Anchorage?

A. Yes, sir, I did.

Q. And what was that date?

A. July 25, 1956.

Q. And at the time he was transferred from the job site into Anchorage did his authority to sign pay checks on that job site cease?

A. Yes, sir, because he was replaced by another site clerk.

Q. Mr. King was under bond at the time, was he not?

A. Yes, sir, they are bonded.

Q. And the bonding regulations require that immediately upon [380] the appointment of a relief man or a substitute man that they be no longer authorized to sign checks?

A. No, sir, that isn't true because the man was transferred to our Anchorage office.

(Testimony of Ronald W. Lovely.)

Q. Was Mr. King authorized to sign checks on behalf of M-K Company for this job site as of the first day of August, 1956? A. Yes, sir, he was.

Q. Was he authorized to sign checks for this job site as of the 15th day of August, 1956?

A. Yes, sir.

Q. When did his authority to sign those checks cease?

A. His signature authorization was cancelled on September 7, 1956. The reason it wasn't cancelled sooner is because he was being considered for re-assignment at one of the other sites.

Q. Then had those checks been, in fact, signed by Mr. Guy M. King they would have been good, would they not?

A. That's right, sir. They would have been.

Q. And are you able to state of your own personal knowledge that Mr. Guy M. King did not sign those checks? A. Yes, sir, I am.

Q. And upon what do you base that statement?

A. The site where Mr. King was located is at Galena and it's considerable distance from Anchorage and he was employed at our Anchorage office during this period. [381]

Q. And did you happen to observe Mr. King all during that period of time?

A. Most of the time, sir.

Q. And it would have been physically impossible for him to have signed those checks?

A. Yes, sir.

(Testimony of Ronald W. Lovely.)

The Court: Any other cross? (Pause.) Is there any redirect?

Mr. Plummer: No, your Honor.

The Court: Very well. Mr. Lovely, you may step down. May this witness be excused?

Mr. Plummer: As far as the Government is concerned he may be, your Honor.

The Court: As to the defense?

Mr. Kay: Yes, your Honor.

The Court: Very well, you may be excused, Mr. Lovely. Thanks for coming.

(Thereupon, the witness was excused and left the stand.)

The Court: It is now seven minutes to 12:00. Could we get started on another witness?

Mr. Plummer: We have one very short witness if she's available. Will you call Lois Bradley, please. She should be in the hall.

The Court: For the Court's information, Mr. Plummer, could you advise us how many more witnesses you intend to call? [382]

Mr. Plummer: Let me think, your Honor. (Pause.) Probably seven or eight. Some of them will be real short.

The Court: Very well.

Mr. Plummer: Some will be quite lengthy.

The Court: Then can the defense expect to go to the proof of their case this afternoon?

Mr. Plummer: Oh, I'd say—it will depend on the cross-examination, but I would be extremely

doubtful if we will complete the case prior to quitting time tonight.

The Court: Thank you. Can counsel for the defense assist the Court in stating how many witnesses you intend to call?

Mr. Kay: Well, at the present state of the case, your Honor, until we hear the remaining seven witnesses, I couldn't estimate. I would have no way of anticipating at all.

The Court: Well, isn't one of the counsel able to tell whether or not you are going to call any witnesses?

Mr. Kay: As it stands right now, I certainly won't.

The Court: Mrs. Bradley, will you please come forward and take the oath.

LOIS BRADLEY,

called as a witness for and on behalf of the Government, and being first duly sworn, testifies as follows on

Direct Examination

By Mr. Plummer: [383]

Q. Will you please state your name?

A. Lois Bradley.

Q. And what is your present occupation?

A. I am Clerk of the Criminal Court in the United States Commissioner's office.

Q. Did you at my request bring a certain file from your office down to the courtroom?

A. I did.

(Testimony of Lois Bradley.)

Q. And would you tell me what it is, sir—or, ma'am?

A. Well, it's a copy of the transcript that was sent to the District Court of the case against—United States vs. Charles Edward Smith.

Q. And is that your official record?

A. It is.

Q. Down in your court? A. It is.

Q. Would you look the transcript over and tell me what, if anything, appears there on March 21st, under the date of March 21, 1957?

Mr. Nesbett: Your Honor, Mr. Plummer hasn't observed the usual rule of showing us the document that he intends to question the witness on, and I object to the question that's now, as yet, unanswered, on the ground that it has not been shown that she is looking at an official record.

The Court: Counsel, could you present the record to—— [384]

Mr. Plummer: Yes, I didn't want to keep anybody here over the noon hour and as a matter of fact, I didn't, your Honor, intend to offer this, if I could get away from it because it is their official record down there. I was merely going to have her tell what it says. I, through the Court, will apologize to counsel for not observing the proprieties.

The Court: The Court accepts your apology. Thank you. You may proceed.

Q. (By Mr. Plummer): I ask you if you will, Mrs. Bradley, look at your transcript and advise the

(Testimony of Lois Bradley.)

Court and the Jury what appears under date of March 21, 1957.

Mr. Nesbett: I will object, your Honor, first, on the ground that as I said before, the document has not been identified as an official record, firstly. Secondly, on the ground that the document is complete—has no relevancy whatsoever to the proceedings here and I ask if your Honor would take a look at it yourself. It's simply a self-serving attempt to cast innuendo and nothing else; has no relevancy whatsoever. There's been—the indictment is before the jury.

The Court: The objection is overruled on the first ground because the evidence as I recall is this witness testified that it was. As to the second ground—just a moment, please. Would counsel approach the bench, please?

(Thereupon, the United States Attorney, together [385] with defense counsel and the Court Reporter approached the bench and the following proceedings were had out of the hearing of the jury:)

The Court: Mr. Plummer, what is your purpose of—

Mr. Plummer: To show, your Honor, that he was arraigned—let the jury know what you, of course, heard in yesterday afternoon's discussion, having been arraigned here on March 21. Subsequent to that he made oral admissions to various people around town and it is my intention to call them and have them testify as to the oral admis-

(Testimony of Lois Bradley.)

sions he made, which is perfectly proper. I want to first, of course, want to bring out that he was arraigned and his rights were advised by a Commissioner here and then, of course, any oral statement he might have made to anybody subsequent to that time is properly admissible.

The Court: What is your position, Mr. Nesbett?

Mr. Nesbett: Well, the witnesses are before us and he's not offered that testimony. I say as to this right now, it's absolutely irrelevant and has no connection whatsoever with this case, your Honor. It's designed only to cast innuendo because he has been indicted. They're trying him on the indictment. This has no relevancy.

The Court: It's your position then, that he can call these witnesses without proving this——

Mr. Nesbett: It's my position he can't call a witness at all for that purpose. [386]

Mr. Plummer: What basis, Mr. Nesbett, through the Court, I will ask, on what basis?

Mr. Nesbett: I am not arguing that right now, Mr. Plummer, but that is going to be my stand, of course, and this has nothing whatsoever to do with the issues here that he has been indicted. It would be just like you could multiply that, your Honor, and show that he had been charged two or three or four times and it might accumulate effect as far as the jury is concerned and have a weight far beyond its real significance.

The Court: I would suggest to counsel for the Government that you offer it for identification as

(Testimony of Lois Bradley.)

No. 23. The Court at this time will have to sustain the objection, and then it will be available in the event it becomes necessary at a later time.

Mr. Plummer: I think, before we conclude our hearing, that this jury certainly have a right, when they're going to be asked to evaluate the weight and credibility, especially in view of the standard instruction that your Honor gives as to oral admissions, to know that at the time the witness testifies, that the Defendant Smith had previously been arraigned before the United States Commissioner and advised of his rights. I think they cannot properly evaluate the weight and credibility of the testimony without it.

The Court: Well, the objection is sustained for the time being and it may be admitted unless you have objection to [387] it—for identification purposes only as Government's Exhibit No. 23.

Mr. Plummer: Can this witness testify from it?

The Court: Well, at this time, Mr. Plummer, I do not believe that it's admissible. Now, I point out to Mr. Nesbett that if by chance you do object to the witnesses that Mr. Plummer intends to call, and this being a basis therefor, then, of course, at that time, the Court can reconsider the offer.

Mr. Nesbett: Your Honor, could we do this: could we convene court without the jury at 2:00 o'clock and argue Mr. Plummer's point. If he is right, then, of course, let the tail go with the hide, but if he is not right, settle the thing once and for all.

(Testimony of Lois Bradley.)

The Court: Well, I am not going to exclude spectators from the courtroom any more during this trial unless there is something that I can't anticipate and furthermore, I am not going to exclude the jurors unless argument be had, now, concerning argument at the bench on that basis.

Mr. Plummer: Now, this will be 23 for identification?

The Court: Yes, only.

(Thereupon, counsel for the plaintiff and defendants resumed their seats and the following proceedings were had in the presence of the jury:)

Mr. Plummer: Your Honor, may Miss Bradley make a copy and substitute it for this one? [388]

The Court: Any objection?

Mr. Nesbett: No objection.

The Court: Very well. Mrs. Bradley, will you do that during your lunch hour, then? Thank you. Unless—you may be excused then unless counsel had cross, which I doubt, at this time.

Ladies and gentlemen of the jury, it's now after 12:00, therefore, the trial of this case will be continued until 2:00 p.m. As you know, I must instruct you not to discuss this case among yourselves, nor are you permitted to let others discuss it with you, and this court will stand in recess until 1:30.

(Whereupon, at 12:05 o'clock p.m., the court continues the cause to 2:00 o'clock p.m. of the same day.)

(At 2:00 o'clock p.m., all counsel being present, the trial of said cause was resumed.)

The Court: Will counsel stipulate that all the jurors are back and present in the courtroom?

Mr. Plummer: Yes, your Honor.

Mr. Kay: Yes, your Honor.

The Court: Very well, thank you. You may call your next witness, Mr. Plummer.

Mr. Plummer: I'd like to call Mr. Edward Dankworth.

Mr. Nesbett: Your Honor, before this witness testifies, [389] may I approach the bench with Mr. Plummer?

The Court: You may.

(Thereupon, counsel for the plaintiff and the defendants, together with the Court Reporter, approached the bench and the following proceedings were had out of the hearing of the jury:)

The Court: Mr. Nesbett.

Mr. Nesbett: Your Honor, I only know this witness by reason of the fact that he introduced himself to me in the hall just a moment ago, but apparently, he runs a lie detector for the Territory of Alaska. Now, I don't know whether he is one of the witnesses Mr. Plummer said he'd call in connection with admissions made by the defendant after his arraignment here on the 21st or not, but the mere fact that if he does identify himself as an operator of that, that piece of equipment, and his later testimony should be included by reason of the arguments

Mr. Plummer and I will have here at the bench on the admissibility of admissions, I think it would be damaging, and, therefore, I want to settle this matter once and for all, right now, before your Honor, as to whether or not he can call this witness to testify as to admissions made after this arraignment here.

The Court: Well, of course, I am perfectly willing to go ahead at this time and listen to your argument, if there is any more objection on the part of the Government. [390]

Mr. Plummer: I will first advise the Court that because of Mr. Nesbett's apprehension about the mention of the word "lie detector," it was not contemplated that that would be brought out, but it could very well come out through inadvertence, you know. On the other, I'd be glad to argue it now, or when the time is appropriate.

The Court: Well, let's proceed right now.

Mr. Nesbett: Thank you, your Honor.

The Court: Very well, you may proceed, Mr. Nesbett.

Mr. Kay: Would you want to argue here at the bench?

The Court: Yes, I do, so as not to inconvenience the jurors, unless there is some reason to the contrary.

Mr. Kay: No, except it's more convenient to be back at your desk; since I am not arguing it, though——

The Court: You may proceed, Mr. Nesbett.

(Following arguments of counsel, the following proceedings were had:)

The Court: Well, of course, the Court can't prejudge a matter. I am glad to have expression of opinions of counsel prior to his testimony, but until such time as it's been shown that this statement was obtained contrary to the law, I feel that the objection should be overruled pending that determination.

Mr. Plummer: I wonder, while counsel is still at the bench, if you would ask the witness to come over here so there will not be any possible mistake—admonish him not to use the [391] word “polygraph,” or “lie detector,” anything like that in his answers.

The Court: Is there any objection on that part?

Mr. Nesbett: No, I have no objection.

The Court: Will you come around, please.

(Thereupon, the witness approached the bench.)

The Court: Mr. Dankworth, Mr. Plummer advises me that you are with the Territorial Police and that you have specialized somewhat in the lie detecting?

Mr. Dankworth: That is correct.

The Court: Now, based upon stipulation of counsel, if there is no objection to the Court advising you, the Court will instruct you during your testimony, you are not to refer to a lie detector or polygraph or any other reference that may connect

it up with that type of evidentiary obtainment. Do you understand that?

Mr. Dankworth: Yes, sir, I understand that.

The Court: Very well, thank you.

(Thereupon, all counsel, together with the Court Reporter and the witness resumed their respective seats, and the following proceedings were had in the presence of the jury:)

M. E. DANKWORTH

called as a witness for and on behalf of the plaintiff, and being [392] first duly sworn, testifies as follows on

Direct Examination

By Mr. Plummer:

Q. Would you please state your name, sir?

A. M. E. Dankworth.

Q. Your occupation?

The Court: How do you spell that?

A. D-a-n-k-w-o-r-t-h.

Q. (By Mr. Plummer): Your occupation?

A. I am an officer with the Department of Territorial Police.

Q. Where are you stationed, sir?

A. Juneau, Alaska.

Q. Were you with the Territorial Police on or about March 7, 1957, sir? Were you employed by them on that date?

A. Would you repeat the date, please?

Q. Were you employed by the Territorial Police on or about March 27, 1957?

(Testimony of M. E. Dankworth.)

A. Yes, sir, I was.

Q. And did you have occasion to be in Anchorage on that date? A. I did.

Q. Do you know the defendant in this case, Charles E. Smith? A. I do.

Q. Did you have occasion to see Mr. Smith on March 27, 1957? A. I did. [393]

Q. Would you tell us where you saw him?

A. I saw him at the Department of Territorial Police office, here in Anchorage.

Q. Did you have a conversation with him at the time you saw him? A. Yes, I did.

Q. Would you be good enough, sir, to relate what that conversation was?

Mr. Nesbett: I will object, your Honor, to that. There has been no foundation laid or——

The Court: Objection sustained.

Q. (By Mr. Plummer): Will you tell us—the date, I presume, is March 27, 1957?

A. That's correct.

Q. The place?

A. It was the Territorial Police Headquarters, here in Anchorage.

Q. And the time?

A. Approximately between one and one-thirty p.m.

Q. And the persons present?

A. Myself, Mr. Smith, and Mr. Harkabus.

Q. Now, did you have a conversation with him on that occasion? A. Yes, I did.

(Testimony of M. E. Dankworth.)

Q. And would you tell us what the conversation was about, sir?

Mr. Nesbett: Now, your Honor, I will object again, and ask that a hearing be held in connection with the circumstances of the evidence which we know is to be elicited from the witness by [394] reason of our conference at the bench. I make that request for the purpose of the record.

The Court: Objection overruled. You may proceed.

Q. (By Mr. Plummer): Would you tell us what this conversation was about, sir?

A. Yes, sir.

The Court: Now, just a moment, please. Would counsel come to the bench and would the witness come to the bench for just a moment, please?

Mr. Plummer: Yes, sir.

(Thereupon, all counsel, together with the Court Reporter, and the witness approached the bench and the following proceedings were had out of the hearing of the jury:)

The Court: Mr. Dankworth, because of the law, it was necessary to rule that the statement made by Mr. Smith could not be admitted into evidence. Now, I did not apprise you of this, but any reference to that statement, likewise, is not admissible, in addition to the fact that you cannot refer to your employment and the type of employment that you are with, the Territorial Police. I must instruct you not to refer—if the conversation alluded to the

(Testimony of M. E. Dankworth.)

statement because the statement has been determined to be inadmissible. You understand that now?

Mr. Dankworth: Yes, your Honor, I understand that.

The Court: All right. Thank you. [395]

(Thereupon, all counsel, together with the Court Reporter and the witness, resumed their respective seats and the following proceedings were had in the hearing of the jury:)

The Court: Do you remember the question?

A. I would like to have it repeated.

Q. (By Mr. Plummer): Would you be good enough to tell the Court and jury what the conversation was about, sir?

A. Yes. I was to interview, with Mr. Harkabus, Mr. Smith about a matter that has nothing to do at the present with this case on trial.

Q. And did you in fact have such an interview?

A. I did.

Q. And did you conclude that portion of the interview? A. I did.

Q. And what did the defendant say, if anything, at that time?

A. As I am testifying only to memory, there will be portions of it that I don't recall, but the portions that I do recall—the defendant, Mr. Smith—if the Court will give me just one moment here. (Pause.)

The Court: Take your time.

A. As I recall the conversation, the defendant

(Testimony of M. E. Dankworth.)

was asked if he knew anyone who was involved in this particular matter which has nothing to do with this case. The defendant [396] stated that he did not want to be a stool pigeon, or known as a stool pigeon. He says, "I, in the past, have got mixed up with the wrong crowd. I got mixed up in the M-K check deal. I cashed the checks. I want to plead guilty and I want to serve my time, but I don't want to be a stool pigeon."

Q. Do you recall anything else he may or may not have said, or you think he might have said on that occasion, sir?

A. Mr. Smith was asked what time or when did he come to Anchorage, in reference to the M-K check caper.

Q. And do you recall what he replied, sir?

A. Yes. I don't recall everything he said, but I do recall this portion: Mr. Smith stated that he had arrived in his pick-up with a gentleman by the name of Volk from Fairbanks. Upon arrival in Anchorage they had stopped at the Westward Inn at which time Mr. Volk left the pick-up. He had driven on to a bar somewhere within a block or two blocks of the Westward Inn. I don't recall, it seems that he mentioned the name of the bar, but it seemed like it was "Silver" something, or "Golden" something, but I don't recall the name of the bar. He said that he was to wait there for Mr. Volk to return. Shortly—or, I don't recall the time element—it seems he said, after a while, this Mr. Volk returned to the bar that he was waiting in with a

(Testimony of M. E. Dankworth.)

bag and two packages of M-K checks and an identification card [397] which he had seen in the International Hotel in Fairbanks and the card, I don't recall the full name on the card, but I recall the name "Ware" was on it and his picture was on it and that the picture had been made by himself and I believe, as I recall, it could have been someone else, but it seemed like he said he and Mr. Volk had taken pictures of one another at the International Hotel. Mr. Smith stated at that time that he had asked Mr. Volk where the checks came from and that Mr. Volk advised him he was getting too nosey and it was none of his business and that Mr. Smith stated that he considered that good advice and never asked any more about it. He stated that he then proceeded with Mr. Volk to cash these M-K checks and I don't recall how many places—it seems to me fifteen—ten to fifteen, I am not for sure of the number of places he said he cashed them. After doing this, he had gone to, I believe a movie—yes, he had gone to a movie. I don't recall whether his movie, was interrupted or after the movie, he was again contacted by this Mr. Volk, at which time he was told to—that something had happened in Fairbanks, and that it was necessary for them to return to Fairbanks immediately. He had stated that he had left his pick-up before going to the movie at a service station somewhere in the vicinity of the Westward Inn. After picking up their pick-up, they had gone out the Glenn Highway toward the Army camp and there was [398] something he said in

(Testimony of M. E. Dankworth.)

reference to—he recalls there was a lot of lights off to the left-hand side of the road which appeared to be a hotel or hospital or something and it was along this point in the highway that he and Mr. Volk had turned off onto a little side road, driven a short distance and stopped. There, they unloaded the merchandise they had bought with the M-K checks which consisted of some tires—there was probably some other items, but I recall tires, battery and high-powered glasses and a hat and they had kept something, and it seems to me it was whiskey; I am not for sure, but it seems they kept some whiskey or apples or something, and that is about all that I recall, other than he says that at that time the money was in either a—wrapped in brown paper or it was in a paper bag, now, which one of the two, I don't recall, in the custody of Mr. Volk and they returned to Fairbanks. He was then asked if he would mind, or, if he would go out on the highway and show us where he dumped these things which he agreed to do. At the time, in the custody of Mr. Pass, and in the presence of Harkabus, Mr.—Sgt. Laird, Department of Territorial Police, and myself, and Mr. Smith drove out on the Glenn Highway. Due to the snow, Mr. Smith wasn't able to find the exact road. He said he wasn't for sure just which road it was and there was a number that was leading off—at any rate, we were unable to find any of the things that he had [399] thrown out of the truck at which time they returned and they let me out of the automobile at the Territorial

(Testimony of M. E. Dankworth.)

Police Headquarters and that is the last time I seen Mr. Smith until this day.

Mr. Plummer: I have no further questions.

The Court: You may cross-examine then.

M. E. DANKWORTH

testifies as follows on

Cross-Examination

By Mr. Nesbett:

Q. That all occurred in the month of March of 1957, Mr. Dankworth? A. Yes.

Q. When you hesitated before you commenced to testify, were you trying to refresh your recollection?

A. No, sir, I was taking in some cautions of the Court, that the Court had given me as to the wording.

Q. You weren't trying to get straight in your mind the recitation you just have given, is that right?

A. No, sir, I was taking two things into consideration: the instructions of the Court and the continuity of what was said when it was said, to begin it properly.

Q. Did you, during the time you hesitated, review the continuity of the recitation that you have just given to the Court? A. No. [400]

Q. Now, Mr. Harkabus had Smith in custody at that time, didn't he?

A. I don't know which one of the officers had him in custody. He was in custody, but as to

(Testimony of M. E. Dankworth.)

whether it was Mr. Pass or just who brought him out there, I don't know.

Q. He was brought to you from the jail here in the custody of those officers at the time you heard all this, wasn't he?

A. He was brought to the Territorial Police and reasonably, I suppose, we could assume from the federal jail.

Q. And the purpose of Harkabus' purpose there was to investigate an entirely different matter than the issues in this case, is that right?

A. Yes—if the word investigate is correct. We wanted to discuss something with him with reference to another case.

Q. And did this—all this that you have recited happen just casually after you completed or discussed the other matters with the original purpose of the visit?

A. That's true. The original purpose lasted a very short time as Mr. Smith made it quite clear, right quick, that he didn't want to be a stool pigeon and he started into this other.

Q. This other was just something that happened casually, after the main purpose had been taken care of, is that right?

A. Well, that is correct, to the extent that he had started talking after we had asked these other questions.

Q. Now, that was approximately a year ago, wasn't it? [401]

A. Yes, March 27th.

Q. Lacking probably one month?

(Testimony of M. E. Dankworth.)

A. That's correct.

Q. Have you refreshed your recollection on the conversation in any fashion since that time?

A. Very little, other than discussing it with Mr. Plummer. That is all.

The Court: Any other cross-examination? (No answer.) Very well. Any redirect, counsel?

Mr. Plummer: No, your Honor.

The Court: You may step down, Mr. Dankworth.

(Thereupon, the witness was excused and left the stand.)

The Court: Call your next witness.

Mr. Plummer: May the Bailiff call John Walker.

JOHN WALKER

called as a witness for and on behalf of the plaintiff, and being first duly sworn, testifies as follows on

Direct Examination

Mr. Plummer: Your Honor, while the Court is not otherwise engaged, I'll tell you that the witnesses that I propose to call—I said this morning seven or eight. Over the noon hour it's been cut down to probably three or four, so we will probably be either late tonight or first thing in the morning we will be through with our portion of the case. [402]

The Court: Very well. You may proceed, counsel.

By Mr. Plummer:

Q. Will you state your name, sir?

A. John Walker.

(Testimony of John Walker.)

Q. And where do you reside, Mr. Walker?

A. Seattle, Washington.

Q. Now, Mr. Walker, are you the John Walker mentioned in this criminal indictment that you are presently on, that is, presently on trial?

A. Yes, I am.

Q. And have you heretofore appeared before this Court and entered a plea of guilty to Counts 6, 7, 8, 9, 10 and 11 of this indictment? A. Yes.

Q. Now, do you know the defendant in this case, James Burton Ing? A. Yes, I do.

Q. And do you know the defendant in this case, Raymond Wright? A. I do.

Q. Mr. Walker, did you live in Alaska during the summer of 1956? A. Yes.

Q. And were you in Fairbanks during that period? A. I was.

Q. Specifically, were you in Fairbanks during the month of August of 1956?

A. I was. [403]

Q. Now, did you have a conversation with Mr. Raymond Wright on or about the 11th day of August in Fairbanks, Alaska? A. I did.

Q. And where did this conversation occur?

A. At the Beachcombers.

Q. Beachcomber? A. Yes.

Q. And would you help the jury out, is that where Mr. Wright lives?

A. That is Mr. Wright's place of residence.

Q. And do you recall the time of day it was?

A. It was in the evening.

(Testimony of John Walker.)

Q. And would you tell us who all was present, sir? A. Well, just Mr. Wright and myself.

Q. All right. Would you tell us what the conversation was, the gist of the conversation?

A. Well, he said that would I be interested in trying to make some big money and I told him I would.

Q. Now, did you have a subsequent conversation with him about this same topic?

A. Later?

Q. Yes, sir. A. Yes.

Q. And would you be good enough to tell us where this conversation occurred? [404]

A. This conversation took place on the 29th or 30th of August in the evening.

Q. And where did it occur, sir?

A. The first part of it at this establishment that Mr. Wright was building and the second part took place at the Beachcombers.

Q. And would you tell us what happened on that occasion—or, first, will you tell us who was present during the conversation, sir?

A. Oh, the conversation—the first part, well, he and I were just talking alone.

Q. Was it to the fact that you were working on this building you were constructing?

A. Yes.

Q. And would you tell us what happened at that place, what you saw?

A. Well, James Ing came by in the station wagon and he said something to Wright and they

(Testimony of John Walker.)

got in the station wagon and drove out towards the gravel pit.

Q. And how long were they gone, if you recall?

A. Oh, about 20, 30 minutes.

Q. And did they later return?

A. Yes, they did.

Q. And after returning did you have a conversation with Mr. Wright?

A. Well, he said that everything was okay. [405]

Q. What happened next, if anything?

A. Oh, it was almost quitting time. I'd been doing some work there on the building, so we left—I was living in a cabin on his place and we left and went to his house and had a few drinks.

Q. And was the defendant, James Ing, present during that time?

A. That same afternoon?

Q. When you went to the house to have some drinks?

A. Yes, he was.

Q. Did you have any conversation about the easy money when Mr. Ing was there?

A. He didn't say anything to me about the easy money, Mr. Ing didn't, no.

Q. When was the next time you discussed the incident with Raymond Wright or James Ing or both?

A. I never did discuss anything with Mr. Ing. The only thing, there was some conversation, but I don't recall just what it was—he took—when he took the picture that night of myself.

Q. And when was that?

(Testimony of John Walker.)

A. That was on the evening of the 29th or 30th of August.

Q. And would you tell us about it, sir? First, who was present and what was done?

A. Well, there was no one present but Raymond Wright, James Ing, and myself. [406]

Q. And where were you located?

A. That is in this particular room where the picture was taken.

Q. Is that in the Beachcombers?

A. Yes, it was.

Q. And would you tell me what happened?

A. Well, he opened the small——

The Court: Pardon me. When you say “he” would you refer to the name specifically?

A. James Ing opened a small overnight carrying case and within was a polaroid land camera and flash attachment.

Q. What, if anything, did he do with this land camera? A. Took a picture of myself.

Q. And what happened to the picture after he took it, if you know?

A. Yes. The picture was too large for this place marked for identification and I took a razor blade and trimmed it down to the size so that it would fit.

Q. And what happened to the picture then?

A. It was pasted on to this identification card.

Q. And what happened to the identification card, if you know?

A. Well, I don't know what happened to it be-

(Testimony of John Walker.)

cause I didn't see it any more until arriving here in Anchorage.

Q. Now, was a Dewey Taylor there at that time?

A. No, he was not.

Q. Was there any conversation between the defendants, Ing and [407] Wright, because of Taylor's failure to be there?

A. Yes, there was something said as to why he wasn't there and he should have been there because he knew that he was supposed to have been there and, I don't know, it was something about Wright didn't think that Taylor was strong enough to go on the caper, as it was, so Ing said that he was okay. He said, "He will be okay."

Q. Now, did you have a subsequent conversation with Raymond Wright about coming to Anchorage?

A. Yes, he said that—on Friday evening when we left work he said that we were going to leave the following day at 1:00 o'clock. That was Thursday evening he said that we was going to leave the following day at 1:00 o'clock.

Q. That would be Friday at 1:00 o'clock?

A. Right.

Q. And did you in fact leave the following—did you leave Fairbanks the following day at 1:00 o'clock, sir?

A. No, we did not.

Q. When did you leave?

A. Oh, about 1:45 because Dewey Taylor was late. He hadn't showed up.

Q. And did you proceed from Fairbanks to

(Testimony of John Walker.)

Anchorage, sir? A. Yes, we did.

Q. And when you say we, who do you mean, sir?

A. Raymond Wright, Dewey Taylor, and myself. [408]

Q. And whose car did you come down in, if you know?

A. I presume it was Raymond Wright's car. It was a Plymouth, two-tone.

Q. And did you have any conversation with the defendant Wright on the way down to Anchorage about what you were to do after you got in Anchorage? A. No.

Q. What time did you arrive in Anchorage, Mr. Walker? A. Late Friday night.

Q. And what happened then, if anything?

A. We stopped at the H&M and had a couple of drinks.

Q. When you say we, who do you mean?

A. Raymond Wright and myself. I think Dewey Taylor was out in the car asleep.

Q. And what happened next, if anything?

A. Oh, we were driven over to a place to get a room. I think the fellow's name was Uncle John. He lives between 17th and 18th, if I am not mistaken.

Q. Now, this was on Friday night or early Saturday morning? A. Yes, it was.

Q. Now, did Raymond Wright stay with you that night?

A. No, he did not. Dewey Taylor and I slept together.

(Testimony of John Walker.)

Q. Do you know where he stayed? When I say "he," do you know where Mr. Wright stayed?

A. No, I couldn't positively state. [409]

Q. Now, when, if ever, did you ever see Raymond Wright again? A. Saturday morning.

Q. That would be the next morning?

A. Yes.

Q. And would you tell us when you saw him or where you saw him?

A. Well, he picked Taylor and I up and we went and had breakfast.

Q. And what happened after that, sir?

A. Well, he made a telephone call. He tried to call someone and they didn't answer, I mean, he couldn't get the party that he was calling.

Q. Did he say where he was trying to call?

A. He was trying to call James Ing, he said.

Q. And did he say where?

A. No, he did not.

Q. All right. Did he at that time leave a call?

A. He left a message that he would call back.

Q. And did he subsequently make another call?

A. Yes, he did.

Q. And do you know who he called on that occasion? A. I do not know.

Q. And what happened next, if anything, sir?

A. Well, the three of us got in the car and drove to Fifth and Gambell and Raymond Wright got out of the car and went in the hotel there, went in by the drug store, I presume it was a hotel because I

(Testimony of John Walker.)

think there is a hotel there behind the [410] drug store.

Q. Yes, sir. What happened next?

A. Then he came out and he had a package and within this package was an identification with Thomas A. Brown on it and he gave it to me with some checks.

Q. And did this identification card have a picture on it?

A. Yes, it had a picture of myself.

Q. Was this the same picture that was taken up in Fairbanks with the polaroid camera?

Mr. Kay: I think he has gone far enough on leading questions. Objection.

The Court: Objection sustained.

Q. (By Mr. Plummer): Had you previously seen that picture?

A. I presume it was the same.

Mr. Kay: Request the answer be stricken.

The Court: Objection sustained and it may be stricken from the record. The jurors are instructed not to consider the presumption of this witness. You may proceed.

Q. (By Mr. Plummer): I will ask you then, sir, had you previously seen this picture that was affixed to the identification card?

A. I saw it—in fact, I saw a picture of myself.

Q. Attached to the identification?

A. Yes. [411]

Q. All right. What next, if anything happened, sir?

(Testimony of John Walker.)

A. Well, the card had a "laborer and social security number, Thomas A. Brown, picture of myself, and a serial number," I believe. I am not positive.

Q. All right. Was Mr. Taylor along with you at this time? A. Yes, he was.

Q. Was he given anything that you know of?

A. Yes, he was given an identification card and some checks also.

Q. And what happened next then, sir?

A. We drove out to Spenard.

Q. And after arriving in Spenard what did you do? A. We started cashing checks.

Q. And had you received any instructions from anybody about what you were to do if they were to inquire as to your place of employment?

A. Yes, it was suggested that—by Wright that we had been working on a site up by Point Barrow.

Q. And would you tell the Court and jury how you were dressed, sir?

A. I was dressed in combat boots and a pair of Army fatigue pants and a plaid shirt.

Q. All right. Did Mr. Wright give you any further instructions before you cashed the checks?

A. Well, all he said, "Just be sure that you don't spend too [412] much money out of the check."

Q. Now, when you negotiated these checks what, if anything, did you receive?

A. Received merchandise and the remainder in cash.

(Testimony of John Walker.)

Q. Would you tell me what you did with the merchandise? A. We put it in the car.

Q. And when you say the car, is that—whose car was it? A. It was Wright's car.

Q. And what did you do with the cash?

A. Well, we—when it would get too bulky in our pockets we'd give it to Ray to keep.

Q. That would be Mr. Wright? A. Yes.

Q. Could you tell me how many checks you cashed in all that day, if you know, sir?

A. Saturday?

Q. Yes, sir.

A. I am not—I couldn't positively state, no.

Q. Could you give us an approximation?

A. I will say about 10, 15.

Q. Did you stay in Anchorage the following day, that is, Sunday? A. Yes.

Q. Would you tell us what you did on Sunday, sir?

A. The same procedure as Saturday afternoon. [413]

Q. And would you be a little more specific. Would you tell us what you did, for the sake of the record? A. We proceeded to cash checks.

Q. And were you hauled out there by the defendant Wright? A. Yes.

Mr. Hepp: I object to that unless—he says, "hauled out there." I don't know what he means, hauled out there.

The Court: Objection sustained.

Mr. Plummer: I am sorry. I will rephrase my question.

(Testimony of John Walker.)

The Court: You may do so.

Mr. Hepp: I believe it's leading also.

The Court: Do you object because it is leading?
(Pause.) You may proceed, Mr. Plummer.

Q. (By Mr. Plummer): Could you be more specific about your activities on Sunday as to where you went and what you did and how you went?

A. We were driven to different sections of the City of Anchorage and the surrounding territory and cashed checks.

Q. And who were you driven by?

A. Raymond Wright.

Q. And were the checks that you cashed Morrison-Knudsen payroll checks?

A. The same as before.

Q. And they were false and forged?

Mr. Hepp: I object to that as calling for a conclusion. [414]

The Court: Objection sustained.

Q. (By Mr. Plummer): Now, when, if ever, did you return to Fairbanks, Alaska, sir?

A. I returned to Fairbanks Monday.

Q. And do you recall about what time?

A. It was in the evening.

Q. And when you say we, who do you mean, sir?

A. Taylor, Wright and myself.

Q. And did you have any conversation with the defendant Wright on your way back to Fairbanks from Anchorage about the operation just completed in Anchorage?

A. Oh, there was gayety between the three of us because the operation had went off smoothly.

(Testimony of John Walker.)

Q. Now, did you make any stops along the highway on the road back to Fairbanks, sir?

A. Yes, we stopped at Palmer and cashed some checks there.

Q. All right. Any other stops, sir?

A. Yes, we stopped to get gas and I think we had something to eat.

Q. Did you stop at any place away from some establishment?

A. Yes, we stopped up by a glacier and we were overlooking a glacier and that is where we burned the articles of apparel that I had been wearing and also the identification cards.

Q. And was Mr. Taylor present at that time?

A. Yes, the three of us were there. [415]

Q. Did he make the fire?

A. Yes, he had a fire of his own. He had one and I had one and myself, also.

Q. And how about Mr. Wright, did he have a little fire too?

A. Yes, he had one too.

Q. For the same purpose as yours?

A. Yes.

Q. Now, did you make any other stops prior to arriving in Fairbanks, sir?

A. We stopped—he asked if—there was a car coming south when we were going north and we stopped and presumed that we recognized someone in the car.

Q. Did you in fact do so?

A. Yes.

Q. And who was the party you recognized?

A. Oh, three people going hunting.

(Testimony of John Walker.)

Q. And who was the party that you thought you recognized?

A. A person by the name of Porter and Burge and I don't know the other fellow.

Q. And after the car had stopped did you get out of your car? A. Yes, we did.

Q. Did they get out of their car?

A. I think one of the fellows stayed—two of the fellows stayed in the car that Burge was driving.

Q. What did Mr. Burge do, if anything? [416]

A. Oh, he got out and walked over to where we were, where we were parked.

Q. And did you have some conversation with him?

A. Not directly. The conversation was general.

Q. And did you get anything out of your car and give to Mr. Burge on that occasion?

A. I got a bottle of whiskey that hadn't been opened and opened it and we had a drink out of it.

Q. And did Mr.—was Mr. Wright there at the time that you got the whiskey and so on?

A. Yes, he was in the immediate vicinity, yes.

Q. And I wonder, would you be good enough to tell me, sir, if he and Mr. Burge had any conversation?

A. Well, the conversation was general. I think the three of us were talking and—but between Wright and Burge the conversation was more general. I think I walked over to the car and—in fact, I did walk over to the car that, Burge's car and offered these fellows in there a drink.

(Testimony of John Walker.)

Q. And did Mr. Wright do anything prior to your leaving the car that you had been riding in?

Mr. Hepp: I object to that. I don't understand the foundation to anything—I think it must relate some way to the issues here. This has been a rambling account and I hesitate to object, but——

The Court: I presume it's relevant, isn't it, Mr. Plummer? [417]

Mr. Plummer: Yes, sir, it certainly is.

The Court: Well, the objection will be overruled if it's relevant.

Mr. Plummer: I will try to make it more specific to make it less objectionable to Mr. Hepp.

Q. (By Mr. Plummer): Did Mr. Wright take any action with any object in the rear seat of the car at this time?

A. Well, in the car itself, yes; a small—same case that the camera had been in, yes. He opened it up and there was a lot of money in it and he showed it to Burge.

Q. Now, did you testify previously that the money that you had got for negotiating these checks you had given to Mr. Wright, is that correct?

A. Yes.

Q. Now, did you proceed on to Fairbanks, Alaska, sir? A. Yes.

Q. And what did you do, if anything, after you arrived in Fairbanks?

A. We unloaded the car of all the merchandise that was in it.

Q. And where did you unload it, sir?

(Testimony of John Walker.)

A. We put some in the cabin and some upstairs.

Q. Where, though?

A. At the Beachcombers.

Q. And is that where Mr. Wright lives? [418]

A. Yes.

Q. And what next happened, if anything, sir?

A. I, immediately after getting the stuff out of the car—well, the money was put on the bed and counted out and Mr. Wright gave me approximately \$1,500.00, and gave Taylor—I don't know. He gave him some money. And I asked Taylor would he take me out to the airport, International Airport there in Fairbanks.

Q. And did he do so? A. Yes, he did.

Q. And what happened when you arrived at the airport, if anything?

A. I was just about three minutes too late to catch the plane going to Seattle that night.

Q. And did you and Taylor—what did you and Taylor next do then?

A. We drove back to the cabin in which I was living and I put my bag inside and then the conversation came up that he was going to drive out and I says, "Well, inasmuch as I can't get a plane for two or three days I will drive out with you."

Q. And did you in fact do so?

A. Yes, I did.

Q. Now, Mr. Walker, have you ever been convicted of a crime? A. Yes.

Q. Would you tell me where and when and for what crime? [419]

(Testimony of John Walker.)

A. I was convicted at Naknek, I believe, in September, 1955, for disorderly person.

Mr. Plummer: May I have just a minute, your Honor?

The Court: You may.

Mr. Plummer: I have no further questions, your Honor.

The Court: You may cross-examine.

Mr. Kay: May we have the usual recess at this time?

The Court: Without objection the Court will take a 10-minute recess.

(Thereupon, at 3:15 o'clock p.m., following a 10-minute recess, the court reconvened and the following proceedings were had:)

The Court: Let the record show all the jurors are back and present in the box. You may proceed with your cross-examination, Mr. Kay.

Mr. Kay: Thank you, your Honor.

JOHN WALKER

testifies as follows on

Cross-Examination

By Mr. Kay:

Q. Mr. Walker, you have from time to time used the name of Youngblood in addition to the name of Walker, have you not?

A. No, I merely used the name Youngblood.

Q. Haven't you? [420]

(Testimony of John Walker.)

A. Individuals have called me that.

Q. I see. So that you are known to some people as Youngblood? A. Yes.

Q. Rather than Walker, both here and in Fairbanks, isn't that true? A. Beg your pardon?

Q. Wouldn't that be true, both here and in Fairbanks, Mr. Walker? A. Yes.

Q. Do you use any other names or have you used any other names? A. No.

Q. In answer to a question by Mr. Plummer you said you had been convicted of, I believe it was, being a disorderly person at Naknek several years ago? A. Yes.

Q. Do you have any other convictions of crime, Mr. Walker? A. Crime?

Q. Yes, have you been convicted of any other crime? A. Misdemeanors. That is all.

Q. Misdemeanors such as?

A. Well, I was in a gambling house and drinking.

Q. On several other occasions?

A. Not on several occasions, no.

Q. I see. But you do have some other convictions for misdemeanors that you can't recall the exact details on at this time, is that right? [421]

A. Yes.

Q. And then you have, of course, you pleaded guilty and have a conviction in this case on several counts in this indictment, is that correct?

A. Yes.

Q. Now, when were you—you have testified that

(Testimony of John Walker.)

you left Alaska thereafter in September of 1956.

Where did you go from Alaska, Mr. Walker?

A. Seattle, Washington.

A. And did you remain in Seattle then for some time?

A. Until I returned to the Territory.

Q. When were you first arrested in connection with this charge, Mr. Walker?

A. February, 1957.

Q. February of 1957?

A. Yes.

Q. And how long did you remain in custody at that time, sir?

A. Until the latter part of April or the first of May.

Q. From February to May then you were in custody here at the federal jail in Anchorage, Alaska, is that right?

A. Yes, I was.

Q. And then what happened? Were you released on bond?

A. Yes, I was.

Q. And how long did you remain out on bond then?

A. Until my return to Alaska this time. [422]

Q. When was that, Mr. Walker?

A. Monday a week ago.

Q. A week ago Monday?

A. Yes.

Q. During that interval, between the time you were released over here and the time you returned last Monday where were you, sir?

A. Seattle, Washington.

Q. Now, have you made any previous statements to the police in connection with the offense with which you are charged here, Mr. Walker?

A. Did I make any?

(Testimony of John Walker.)

Q. Yes. A. Previous statements?

Q. Yes, before testifying here today.

A. Yes, I did make a statement.

Q. And when did you make that statement, sir?
About when?

A. I made a statement on the day that the officers interrogated me in Renton, California—I mean, in Renton, Washington. I beg your pardon.

Q. When was that, Mr. Walker?

A. That was in February of '57.

Q. In February of 1957 you made a statement, is that right? You don't recall to whom that was made?

A. I believe to Lt. Trafton and—— [423]

Q. That is Lt. William Trafton of the Territorial Police?

A. Yes, and I can't recall the individual that was with him. I think that—I am almost positive that he was a fire investigator.

Q. Would that be a Mr. Harkabus?

A. Beg your pardon?

Q. Ed Harkabus, would that be the name?

A. I am almost positive.

Q. That is one statement that you made in Renton in February, 1957. Have you made any other written statements or oral statements which were reduced to writing and then shown to you?

A. Yes, I made the statement before the grand jury.

Q. I see. That, however, was just oral testimony, was not written testimony, was it? I mean, it wasn't reduced to writing and shown to you?

(Testimony of John Walker.)

A. I don't know whether they reduced it to writing then—I am almost positive it was took down by a stenographer.

Q. It probably was, but it wasn't later typed up and shown to you was it? A. Yes.

Q. Oh, it was your testimony before the grand jury, and how about any other statements? Now, have you made any statements since?

A. That is the statement. [424]

Q. Those are the two.

Mr. Kay: At this time I'd like to request your Honor that in accordance with the statute, the statements previously made by this witness reduced to writing and shown to him be handed to me for my examination.

Mr. Plummer: We have the statement which was made. I don't know that we have the grand jury testimony transcribed or not and if we do have I resist showing it to the defense because it's not within the purview of the statute. We have a special statute on it.

The Court: Mr. Walker, did you sign any statement that you may have made before the grand jury?

A. I can't positively state. I can't positively state whether I did or not. I am not sure.

The Court: How many statements did you sign, if you know?

A. Just the one.

The Court: Well, you have had handed to you this one statement.

Mr. Kay: Yes. Now, at this time, again in ac-

(Testimony of John Walker.)

cordance with the statute, just a few minutes in which to examine the statement to see if I wish to use it in any way.

Mr. Plummer: May I inquire of Mr. Walker if this is the only statement that he signed?

The Court: I have already done that, counsel.

Mr. Plummer: Fair enough. I just wanted to be [425] proper, your Honor.

Mr. Hepp: I might ask Mr. Plummer if he has a copy that I could study. It's going to eliminate a little time waste.

The Court: Do you have an extra copy?

Mr. Plummer: He can have it until court starts. If court starts and counsel wishes to interrogate, of course, I'd like to have it.

The Court: Yes. Let the record show an extra copy has been handed to Mr. Hepp at this time.

Q. (By Mr. Kay): Mr. Walker, am I correct that this statement that I have just examined was made here in Anchorage or was it made in Renton, Washington?

A. The statement that I signed was made here in Anchorage.

Q. I see. About the first of March?

A. I don't know the date when it was made or I don't know the date it was signed, but I was taken before the Commissioner, I believe, and had it notarized and I signed it.

Q. And you had been in custody a week or so at that time?

A. I don't know how long I had been in custody.

(Testimony of John Walker.)

Q. During this—at that time—let me ask you this, Mr. Walker. At the time you gave this statement did you have any indication from anybody on the staff of the United States Attorney or the United States Attorney himself as to whether or not—or did you at that time indicate that you intended to plead [426] guilty to the offenses which you were charged?

A. At the time I made the statement?

Q. Yes. A. No.

Q. When did you decide, later decide then to enter a plea of guilty?

A. When I found out that I was on my own and there was no other way I could possibly get out of this unless I did.

Q. No other possible way you could get out of it unless you did, is that your testimony?

A. That's right.

Q. When was that, that you discovered that that was the only way out?

A. After I had been in jail over a few days, over a week.

Q. Is that—you mean back in February of '57—

A. Yes.

Q. (Continuing): —or this trip? I see. Well, then, you made up your mind to enter a plea of guilty at that time clear back in February of 1957?

A. When I didn't get out of jail as I had been promised I would be, yes.

Q. And you didn't actually enter a plea of guilty, however, until after you returned here to

(Testimony of John Walker.)

Alaska this—just before the trial of this case, is that right?

A. That's when I entered the plea. [427]

Q. Now, during the time that you were out on bail then, before you returned here to Alaska, did you have any correspondence with the United States Attorney's office concerning a plea of guilty?

A. No, I did not.

Q. Didn't make up your mind to enter—did you have any conference with them at all, Mr. Walker?

A. Yes.

Q. Letters exchanged back and forth between you and the United States Attorney's office during that period or just a letter from them or what?

A. I was inquiring as to what would be the possible date of my trial.

Q. And you got a reply to that, did you?

A. Yes.

Q. And any discussion in those letters of your entering a plea of guilty?

A. No.

Q. None whatever. When did you discuss with the United States Attorney's office, anyone in that office, the fact that you had decided to enter a plea of guilty, Mr. Walker?

A. I decided when I came back up here that I would enter a plea of guilty. I had already made the statement prior to that time.

Q. Well, you just testified that you had already made up your [428] mind to enter a plea of guilty quite a bit earlier back in February, but when you got back up here this time that is the first time you

(Testimony of John Walker.)

discussed it with the United States Attorney's office?

A. I did enter the plea then, yes.

Q. Now, did you have any indication of what your probable sentence would be in return for your entering a plea of guilty and your testimony in this case, Mr. Walker?

A. No, I did not.

Q. No indication from them at all, is that right?

A. No.

Q. Did they indicate that they would recommend more leniency in your regard than anyone else or give you to understand anything along that line?

A. No, because when I went before the grand jury I stated my case before them and I told them that I was inadvertently involved in a crime and the only reason I was involved was my family was at stake; in fact, they were practically destitute at the time and I was helpless and I just entered into it.

Q. Well, then, you didn't—I take it that you do hope for some consideration or some leniency in this case in view of your cooperation?

A. No, I can't say that I will get it.

Q. You don't even have any hope?

A. I couldn't anticipate it, no, because—— [429]

Q. Well, a hope springs eternal in a human breast. Wouldn't you be candid enough to admit——

A. Well, there is such a thing, yes.

Q. You do entertain such a hope, do you not, perhaps reasonably enough?

A. According to the life I have lived and I

(Testimony of John Walker.)

haven't been involved in any crimes, I don't see any reason why that I shouldn't try and ask for probation or a leniency of the Court.

Q. But they haven't made any indication to you that that is going to be their recommendation in view of your testimony? A. No.

Q. Did Mr. Duggar or anybody in the office warn you to be sure to testify that there had been no deals of any kind made with the United States Attorney's office?

A. Mr. Duggar? I don't know him, I don't believe.

Q. You haven't interviewed with him down here getting ready for this case? A. No.

Q. Well, you have had a number of conferences with the United States Attorney and members of his staff in preparation for your testimony, haven't you? A. Number of conferences?

Q. Yes. A. No. [430]

Q. At least one, shall we say?

A. Yes, I read the statement that I had made.

Q. Well, you were over there at the United States Attorney's office the other night for several hours, were you not, the same evening that Mr. Taylor—you and Mr. Taylor?

A. Several hours?

Q. Yes. A. No.

The Court: Pardon me, counsel. Would you give the Court just a few moments to make a phone call. Court will go into recess for one moment, please.

(Testimony of John Walker.)

(Thereupon, following a short recess, court reconvened and the following proceedings were had:)

The Court: Let the record show all the jurors are back and present in the box. You may proceed, Mr. Kay. Thanks for the consideration.

Mr. Kay: Yes, indeed.

Q. (By Mr. Kay): Mr. Walker, I was asking you about your conferences——

Mr. Plummer: Your Honor, I don't see the defendant, Charles E. Smith.

The Court: Very well.

Mr. Plummer: I am sorry to interrupt.

The Court: Thank you. Let the record show Mr. Smith [431] has returned. Thanks, Mr. Plummer.

Q. (By Mr. Kay): I was asking you about what conferences and meetings you have had with the office of the United States Attorney in preparation for your appearance here today, Mr. Walker, and I believe you testified that you did spend some time one evening last week over at the office, is that correct? A. Yes, I did.

Q. And you were examined at that time about what your testimony would be here today?

A. I just read this statement that I had made.

Q. How long were you there, Mr. Walker?

A. You said several hours, and I was only there a little over an hour, I think.

Q. Well, I won't quibble about the time. You weren't there continuously between 8:00 and 11:00?

(Testimony of John Walker.)

A. I don't know the time.

Q. But you were there, in your opinion, more than an hour, at least? A. Yes.

Q. It's your testimony that all you did was read over that statement?

A. That's all I did, yes.

Q. The rest of the time, what did you do, just sit there and talk about other things? [432]

A. I re-read the statement to see if it was the same statement that I had made, yes.

Q. At the same time, I believe, Mr. Walker, when I called the jail and asked if you would be good enough to talk to me briefly about the case you refused, did you not? A. Yes, I did.

Q. And you refused with rather obscene and profane language, the message you sent to me, was it not? A. No. The first time?

Q. Yes, the first time I called you and asked if you would be good enough to talk to me didn't you send me a rather obscene message back?

A. No, I didn't.

Mr. Kay: Your Honor, I hesitate to shock anyone in the courtroom, but I feel that it's necessary to ask this question.

The Court: Well, in that respect, counsel——

Mr. Kay: Perhaps it's on an irrelevant point.

The Court: It's on a collateral matter.

Mr. Kay: Probably would not be a matter of impeachment if I did ask it. The witness has denied it, in any event.

The Court: Very well. You may proceed.

(Testimony of John Walker.)

Q. (By Mr. Kay): Mr. Walker, you said a minute ago that you had mentioned the fact that your family had been—you got into this crime because your family was so poorly off. As a matter of fact, [433] your occupation has been that of a gambler, has it not, for a number of years?

A. No. My occupation has been that of a seaman cook first class.

Q. When is the last boat you went out on, Mr. Walker? A. LST-618.

Q. And when was that? A. 1956—1955.

Q. In 1955? A. Yes.

Q. And how many days did you spend at sea during the year 1955?

A. I was on a resupply mission to the dewline.

Q. And how many days did you spend at sea during 1955?

A. I can't recall. I have it in my discharge record book.

Q. Isn't it also a matter of fact that your purpose in getting these jobs on boats at sea was to take the decree in their gambling games?

A. No.

Q. That was your hope, let's say, referring again to hope, when you shipped on these trips that you would profit by gambling?

A. I quit gambling when my wife become pregnant with my first daughter.

Q. And when was that? A. 1947.

Q. You haven't gambled since? [434]

(Testimony of John Walker.)

A. I quit. I have gambled since, yes. Do you wish me to relate the circumstances?

Q. No. When you were first picked up you were questioned extensively about the relationship with Mr. Ing on this matter, were you not?

A. No, I was not.

Q. Isn't it a fact that the interest of Mr. Harkabus and these other officers when they picked you up was concentrated on Mr. Ing?

A. They didn't pick me up. They interviewed me at Renton, Washington, and I didn't see them again until the following week.

Q. They didn't arrest you at that time?

A. No, they did not.

Q. At that time did you deny any complicity in this check matter?

A. They asked me did I know about it and I told them no.

Q. And they asked you also if you knew Ing and if Ing had anything to do with it?

A. No, they did not. They didn't ask me anything concerning Ing and the check. They asked me about some fires in Fairbanks and I told them I didn't know anything about them.

Q. You didn't mention Ing's name during that conversation?

A. Yes, concerning some fires and I didn't know anything about it.

Q. And they asked you about Ing and repeatedly about that, did [435] they not? A. Yes.

Q. Then when they finally got around to this

(Testimony of John Walker.)

check matter they again went into—right away went into the question of Ing, whether Ing had any connection with it, did they not?

A. I don't recall.

Q. Well, you wouldn't deny that that is a fact, would you?

A. I don't know. I don't recall.

Q. Mr. Walker, you have testified concerning your last trip as a seaman. As a matter of fact, on that you jumped ship on the way back to Seattle, did you not?

A. Remain here in the Territory. I beg your pardon, no.

Q. Just one more question, Mr. Walker. You testified concerning a conversation at the Beachcombers on an occasion, I didn't get the date, but it was apparently around August 29th or 30th when Mr. Ing came by the Beachcombers and picked up Wright and was gone for 15 or 20 minutes?

A. I didn't testify to that, no.

Q. I am sorry. You correct me in respects in which I was mistaken.

A. Yes.

Q. Please.

A. It was this building that Mr. Wright was building that I was helping construct.

Q. I see. At that location. All right. Now, was anyone else [436] present on that occasion?

A. Yes, there were individuals in the house.

Q. As a matter of fact, there were a couple of girls there, were there not, or women?

A. Yes.

(Testimony of John Walker.)

Q. And isn't it a matter of fact, Mr. Walker, don't you recall that Mr. Ing had brought with him a check which had been taken, given, or transacted, handed over by one of those girls, or through one of them over at the Big Ben Liquor Store and he was there to see if he could get the money out of Wright, some discussion between he and Wright over that check? A. No, I don't.

Q. You don't recall that?

A. No. No, I don't recall that.

Q. In any event, on no occasion here, I believe you testified, at least I gather from your testimony that on no occasion here did Ing have anything to say about these checks or this easy money?

A. I don't know whether I testified to that fact or not, but I didn't hear him say anything about checks.

Mr. Kay: I believe that is all.

The Court: Very well. Mr. Hepp, do you have any questions? [437]

JOHN WALKER

testifies as follows on

Cross-Examination

By Mr. Hepp:

Q. How old are you, Mr. Youngblood?

A. John Walker is my name.

Q. Excuse me. Mr. Walker.

A. 57 years old.

Q. I gather from the statement that you made

(Testimony of John Walker.)

that you are married? A. Yes, I am.

Q. And have a family? A. Yes.

Q. Where do they reside?

A. Seattle, Washington.

Q. Have they resided continuously there for some time? A. Yes.

Q. How long?

A. Since 1947. That is, my family.

Q. Yes. How long have you been in the Territory of Alaska generally, I mean, excluding just visits or trips Outside.

A. How long have I spent in the Territory?

Q. Yes.

A. On one occasion I think I spent two months here. I came here in December and I left in February. [438]

Q. Well, when was the first—what year was the first trip that you made into the Territory of Alaska? A. 1951 or two, I believe.

Q. You have been here intermittently, that is, off and on since that time, is that right?

A. No, I was only here on two occasions that I was—when I was aboard ship.

Q. Which ships were those?

A. The SNS-Valentine and LST-ESNS.

Q. Are you connected with services of some kind?

A. Military Sea Service, Transportation Service.

Q. And it's your testimony that you followed that occupation during most of your adult life?

A. No, that was not my testimony, no.

Q. What would be your testimony concerning

(Testimony of John Walker.)

the principal occupation since you have become an adult? A. Well, I was in business.

Q. What kind of business?

A. A catering business and I also had a number of restaurants.

Q. And where did all this occur?

A. Well, some in California, one in Seattle, Washington, catering business in Omaha, Nebraska.

Q. Where were you originally born, sir?

A. Darby, Delaware County, Pennsylvania.

Q. And how long after that did you move to the West Coast? [439]

A. I came to the West Coast in 1923.

Q. You spent the principal portion of your life since then on the West Coast?

A. Yes, I have.

Q. I gather you have lived quite a few places though in your life, is that right, moved around to some extent? A. No, not moved around, no.

Q. Well, a seaman goes many places, does he not?

A. But that is not living. I beg your pardon.

Q. Oh, I see. Well, you traveled quite a bit then, is that right?

A. Yes, I have been around the world a number of times.

Q. Have you gambled quite a bit on these trips?

A. No, not quite a bit. I have gambled, yes.

Q. Well, is your gambling a serious nature or just a small friendly game, as we sometimes think of it?

(Testimony of John Walker.)

A. Just what do you mean as a serious nature?
As a livelihood?

Q. Yes. To bridge a lack of employment, for instance.

A. At one time I was a professional gambler, yes.

Q. In fact you ran a gambling establishment up at Fairbanks known as Club 11 during a period of time, is that right?

A. No, I did not.

Q. What was your affiliation with the Club 11?

A. My affiliation with the Club 11 was I was a dealer there.

Q. Well, what did you deal? [440]

A. Dice and also blackjack.

Q. What year was that?

A. The same year of this action.

Q. Would you state the year, please?

A. 1956.

Q. So that I can understand the prior statement, would you call that serious gambling, dealing dice?

A. If you will recall, when Mr. Kay asked the question——

Q. Just answer my question, please?

A. Beg your pardon?

Q. Would you consider your activities at the Club 11 as serious gambling? Just answer it, please.

A. Definitely, yes.

Q. How long have you known Raymond Wright?

A. For about a period of 10 years or more.

Q. Has that been principally in the Territory of Alaska or divided up among several areas?

(Testimony of John Walker.)

A. I knew him for a short spell in Seattle, Washington, and I knew him during the period that I was in Fairbanks.

Q. To your knowledge, how long has Mr. Wright resided in Fairbanks or in that area?

A. How long has he resided there?

Q. Yes, to your knowledge?

A. I couldn't state that. I don't—

Q. Would you hazard a guess, please? [441]

Mr. Plummer: I object. He has already said he didn't know, your Honor.

The Court: Objection sustained.

Q. (By Mr. Hepp): Could you state that he had lived there, to your knowledge, more than three years? A. I am almost positive he did.

Q. More than four years?

A. I don't know.

Q. Do you know Dewey Taylor?

A. Yes, I know him.

Q. How long have you known Dewey Taylor?

A. I met him after June 22, 1956.

Q. Could you state whether you got on with him quite well or not so well, I mean, in a friendship basis?

A. There is no friendship involved because he is just an acquaintance of mine.

Q. At the time of this Labor Day incident, where in Fairbanks were you living?

A. In one of the cabins at the Beachcombers.

Q. Is that Mr. Wright's place? A. Yes.

Q. Was that also the cabin that you stated that

(Testimony of John Walker.)

you had unloaded some of this stuff that you had bought?

A. Yes. [442]

Q. Are you pretty good friends with Wright then?

A. Yes, we were.

Q. And previously?

A. And previously.

Q. Have you always, up until the last six months, say, been on good terms with Raymond Wright?

A. We were on good terms, yes. We were on good terms until he promised to get me out of jail and refused.

Q. You became intensely angry with him then, is that right?

A. Wouldn't you?

Q. Have you ever discussed this matter, this incident, this Labor Day incident with Mr. Dewey Taylor prior to the last few days here?

A. Did I discuss it with him?

Q. Yes.

A. No.

Q. Well, come now, Mr. Walker, you must have discussed it at a time when you testified that you and Mr. Taylor came down from Fairbanks in a car? You said you talked all the way down and were very jovial on the way back. You discussed it then, didn't you?

A. Well, if that is what you mean.

Q. Well, I asked you if you had ever discussed it with Mr. Taylor.

A. I—you said the last—within the last few days.

Q. I said excluding the last few days. [443]

A. The answer is yes.

Q. We will start all over again.

A. Okay, rephrase the question.

(Testimony of John Walker.)

Q. Prior to the last, or excluding the last few days or week, had you ever discussed this matter with Mr. Taylor? A. Yes.

Q. Now, was that a discussion limited during the time, the immediate time when it happened?

A. Well, we talked about it on the highway down to Seattle.

Q. In fact, you talked about it quite a bit with him from that time and since, is that right?

A. Not quite a bit, no.

Q. Well now, isn't it a fact, Mr. Walker, that Mr. Taylor in fact stayed at your place in Seattle when he was there, is that right?

A. That's correct.

Q. Real good friends?

A. No, not real good friends.

Q. Just friends?

A. No, not friends; just acquaintances.

Q. Is it a custom of yours to bring acquaintances to live with you and your family?

A. No, it is not a practice of mine.

Q. But you made an exception in this case?

A. My wife did. [444]

Q. Well, did she know Mr. Taylor?

A. No, she did not, not prior to returning to Seattle.

Q. Did I understand, or did you testify in connection with whether or not you had been sentenced on your plea of guilty in this charge? I can't recall the testimony. If you will just, please state whether you had or——

A. I said——

(Testimony of John Walker.)

Mr. Plummer: I object. The question is repetitious. At the start of the trial there was an agreement made between counsel that on cross-examination the same field would not be covered and Mr. Kay covered it at some length.

The Court: That is correct.

Mr. Hepp: Well, excuse me. If Mr. Plummer insists, I will request then, if I can't recall a piece of testimony, to have the Reporter spend 15 minutes or half an hour to go back——

The Court: Supposing you discuss it with Mr. Kay for a moment. Maybe he can help you.

Q. (By Mr. Hepp): Mr. Kay informs me that he did in fact ask you that question. Do you now know, Mr. Walker, when you are going to be sentenced in this matter? A. Do I know?

Q. Yes. A. No, I do not.

Q. Have you had any discussions with Mr. Plummer or any of his [445] staff in connection with your sentencing? A. No, I have not.

Q. Did Mr. Taylor in any of his discussions with you make any statement to you indicating that he was expecting a suspended sentence?

A. Mr. Taylor did not, no.

Q. Are you hopeful of getting a suspended sentence out of this case? A. I hope so, eternal.

Q. I believe that was the phrase that counsel used.

A. Did he? I am sorry. I didn't hear him.

Q. I have just a few other questions. I believe you made—you testified concerning either you tak-

(Testimony of John Walker.)

ing Mr. Taylor, or Taylor taking you out to an airport in Fairbanks, International Airport?

A. Mr. Taylor took me out there in his car.

Q. In whose car? A. In his car.

Q. What kind of car did Mr. Taylor have?

A. An Oldsmobile.

Q. But you missed the plane, is that right?

A. I did.

Q. And drove to the states? A. Yes.

Q. When did you become acquainted with Mr. Volk, I believe you [446] mentioned the name Volk?

A. No, I did not.

Q. Was there a name——

The Court: It was used by Mr. Dankworth.

Mr. Hepp: Oh, excuse me.

Q. (By Mr. Hepp): Do you know Mr. Volk?

A. No, I do not.

Q. Do you know anybody who purports to be that or somebody who has been called Mr. Volk? Do you know any person that is referred to by that name? A. No, I do not.

Q. Is it your testimony that you didn't meet a Mr. Volk out at the Club 11 then? Just yes or no, sir.

A. If I met him I don't recall. I don't remember the name.

Q. You have no conscious recollection of anybody named Volk? A. No, I do not.

Q. Or Johnny Volk or John Volk? Would that—your answers be the same to the questions if I had

(Testimony of John Walker.)

added the name John Volk instead of just Mr. Volk?

A. I can't recall the name Volk. I don't—I mean, it just doesn't ring any bells.

Mr. Hepp: May I have just a moment?

The Court: You may.

Mr. Hepp: I believe that is all the questions I have. [447]

The Court: Mr. Nesbett?

Mr. Nesbett: No.

The Court: Very well. Any redirect, counsel?

Mr. Plummer: Just a couple of questions, your Honor.

JOHN WALKER

testifies as follows on

Redirect Examination

By Mr. Plummer:

Q. Now, after your arrival in Seattle did your wife rent a room to Dewey Taylor?

A. Yes, she did over my protestations. He had been living at the Frey Hotel and seemingly he was running short of money and he was by the house one afternoon and I was showing him around the place and I have a semi-room in the basement; in fact, it's a bed and all it needs is the walls. There is some curtains around it and he said, "Why didn't you tell me that you had this before?" He said, "I could have rented a room from you." I said, "Well, I am not in the habit of having individuals live in my home." So my wife said, "Oh, you might as

(Testimony of John Walker.)

well go ahead and rent him a room. You took a chance on him killing you coming down the highway." So she did.

Q. If he was a guest, he was a paying guest?

A. Yes, he was. [448]

Mr. Plummer: I have no further questions.

The Court: Any recross?

Mr. Hepp: Yes.

JOHN WALKER

testifies as follows on

Recross-Examination

By Mr. Hepp:

Q. In connection with that matter, Mr. Walker, are we to understand that here is a man that you went through a big caper with, he offered you a ride down the highway, and you rented him a room?

A. Yes, because I did all of the driving and paid most of the expenses also.

Q. I see, and rented him a room when he got there?

A. No, not when I got there. No, he lived in a hotel up-town and squandered his money and then he was practically destitute and he came there. He wound up owing my wife \$43.00 for room and board he couldn't pay.

The Court: Any other recross? Hearing none, then you may step down.

(Thereupon, the witness was excused and left the stand.)

The Court: You may call your next witness.

Mr. Plummer: May I request of counsel the witness' statement? (The statement was handed to Mr. Plummer.) I'd like [449] to call Mr. George Hooker.

GEORGE W. HOOKER

called as a witness for and on behalf of the Plaintiff, and being first duly sworn, testifies as follows on

Direct Examination

The Court: You may proceed, counsel.

By Mr. Plummer:

Q. Would you please state your name, sir?

A. George W. Hooker.

Q. And your occupation, sir?

A. Assistant Hotel Manager.

Q. And what hotel, sir?

A. Westward Inn.

Q. And were you so employed during the months of August and September of 1956, sir?

A. Yes.

Q. Did you at my request bring your records of the registration in the hotel covering the month of August of 1956 and the first part of September, sir?

A. Yes.

Q. I wonder if you would be good enough, sir, to inspect those records? (The witness did so.) Covering particularly the date of August 31, 1956?

A. This is the registration book. First the guests register on [450] a guest card.

Mr. Plummer: May I approach the witness?

(Testimony of George W. Hooker.)

A. Which I believe is in the hands of the——

The Court: You may approach the witness, then.

A. Perhaps in your hands.

Q. (By Mr. Plummer): Is this what you mean by a guest card, sir?

A. Yes. After the guest registers, it's written up on a guest ledger and we enter it in this book for our records.

Q. And those records are kept in the normal course of business?

A. Yes. This book is kept in-taut for reference and this card goes to the Westward Hotel to be filed away for permanent records; also, the guest ledger finally arrives at the Westward Hotel for permanent record.

Q. I wonder if you would be good enough, sir, to examine the date, August 31, 1956, and see if James B. Ing was a guest at your hotel on that date?

A. On August 31, 1956, we have a registration, Guest Ledger S-1-611, James Ing and Wife, Fairbanks, Room 40.

Q. Thank you. And is that reflected also on this?

A. This here is apparently the guest card and this is the guest ledger of the charges, if you wish to examine it.

Q. Now, I wonder, sir, if you'd look at your ledger card No. S-1-611 and tell me, if you can from it, how long Mr. Ing stayed with you on that occasion? [451]

A. Well, the ledger records show that he checked

(Testimony of George W. Hooker.)

in on August 31 and checked out on September 2.

Q. Thank you very much, sir. Now, I wonder if you would check to see on your ledger card S-1-611 if there is any charge for telephone calls there?

A. We have on August 31 two local calls, on September first, one local call, one long distance call.

Q. And will you tell me what the charge on that long distance call was? A. \$2.50.

Q. Would it destroy your records, Mr. Hooker, if we asked you to leave your ledger card S-1-611 here, plus the registration card? Would that destroy the continuity?

A. No, only that I presume we should have a receipt of some kind for our records for it.

The Court: The Court instructs the in-court deputy to give you a receipt for that in due course.

Mr. Plummer: Let me show them to counsel prior to——

The Court: Yes. As a matter of fact, if counsel do not object, a photographic copy could be made forthwith and they could be returned. Show them to counsel, will you please.

(Thereupon, the documents were handed to defense counsel.)

Mr. Kay: As long as the originals are available for cross-examination, your Honor. I wonder if we could take a recess before examining these or was the Court planning on taking [452] a recess. I'd suggest a 5-minute recess.

Deputy Clerk: Could they examine it and photograph it during the recess?

(Testimony of George W. Hooker.)

The Court: Yes, it will just take a moment. Suppose we go ahead and photograph it.

Mr. Kay: I just wonder if you could do that during the recess. I wanted to use the original, however, on cross-examination.

The Court: Very well. Court will go into recess for a period of 5 minutes.

(Whereupon, at 4:30 o'clock p.m., following a 5-minute recess, court reconvened and the following proceedings were had:)

The Court: Let the record show all the jurors are back and present in the box. You may proceed with your cross-examination. Have you photographic copies?

Mr. Kay: Are you through, Mr. Plummer, with your direct examination?

Mr. Plummer: I would like to do this before I complete my direct examination, I would like to offer in evidence this card and the billing sheet.

The Court: Which, let the record show, is a photographic copy of the original. Is there any objection?

Mr. Plummer: Have you had an opportunity to see it?

Mr. Kay: I haven't, no. I'd like to see the original, [453] if I could, rather than the copy. (The documents were handed to Mr. Kay.) And if I may, your Honor, then I'd like to examine Mr. Hooker a few questions about them before——

The Court: You may proceed.

(Testimony of George W. Hooker.)

Mr. Kay (Continuing): —admitting them into evidence.

The Court: Let's have the registration card as Exhibit No. 24 for identification and the financial statement as No. 25, if there is no objection, for identification only.

Q. (By Mr. Kay): Which is the small card, Mr. Hooker?

A. That is the registration card.

Mr. Kay: May I approach the witness, your Honor?

The Court: Yes, you may.

Q. (By Mr. Kay): Mr. Hooker, what are these—this information down here? I am showing the lower lefthand corner of the card.

A. That has no relation at all except that Bill Mueller is the clerk at the Westward Hotel and I presume when he gave this he must have put some information on there and what it could be, I don't know, or it may be that these cards are checked in against my transcript and it may be some records that they apply, but whatever it is I am not familiar with it.

Q. It doesn't have anything to do with Mr. Ing's registration at the hotel at that time?

A. None whatsoever; some records from the hotel and from my [454] records, and I am not familiar with that.

Q. Now, this card, referring to the registration card, just shows the arrival, the date of arrival, the room to which the parties were assigned, and the

(Testimony of George W. Hooker.)

rate, is that correct? A. That is correct.

Q. And the clerk, I take it, who checks the party in? A. Correct.

Q. And that was you, Mr. Hooker?

A. That is correct.

Q. All right. Now, referring to the other sheet. What do you call this? The guest account sheet?

A. Guest ledger sheet.

Q. That again shows the room number, the arrival date, and the rate, does it not?

A. Correct.

Q. Now, in whose handwriting is that guest ledger sheet made out? Is that made out at the Inn, Mr. Hooker? A. Yes.

Q. And in whose handwriting is this particular guest ledger sheet accomplished, sir?

A. That is in my handwriting.

Q. Is it all in your handwriting?

A. No. This portion is (indicating), checking it in and this here (indicating). These figures here (indicating) are the clerk's figures, relief clerk that we had. [455]

Q. Do you know who that relief clerk was, Mr. Hooker?

A. No, I don't recall the name of that chap that was on at that time. The Westward Hotel records would show that, but it's been two years ago and I have forgotten his name now. He's not in the Territory. He's in the states, I know that.

Q. Mr. Hooker, now, you didn't check out—

(Testimony of George W. Hooker.)

check Mr. Ing and his wife out of the hotel then, did you? A. No.

Q. You don't know of your own knowledge when they checked out or when they actually left the Westward Inn, do you? A. No.

Mr. Plummer: This is getting into cross-examination, your Honor.

Mr. Kay: You are correct. I will desist at this point temporarily and state that I have no objection to the admission of these.

The Court: Are there any other objections? (Pause.) Hearing none, then they may be admitted and marked Government's Exhibits 24 and 25.

Mr. Plummer: And will the Court's ruling also include the stipulation with counsel that the copies may be admitted?

Mr. Kay: Yes.

The Court: Very well.

Mr. Kay: Now, may I continue then with regular cross-examination? [456]

Mr. Plummer: Yes.

GEORGE W. HOOKER

testifies as follows on

Cross-Examination

By Mr. Kay:

Q. Mr. Hooker, what is the check-out time at the Westward Inn, sir?

A. 2:00 o'clock, 2:00 p.m.

Q. 2:00 o'clock in the afternoon?

(Testimony of George W. Hooker.)

A. Uh-huh.

Q. So that if a party checked out after 2:00 o'clock in the afternoon, say several hours after 2:00 o'clock in the afternoon, it would at least be the regulation of a hotel that that person be charged for the additional day?

A. Well, in some cases, yes, not always. Sometimes they will advise me they are going to leave and could they leave their bags and things in the room for another hour or two hours or sometimes until 5:00 o'clock and as long as they advise us so we can have the maid make the room up, why, we are very liberal that way, but if they—in the event they didn't advise us and deliberately took advantage and the maid has gone home and I have a room not made up I will deliberately charge them another day, yes.

Q. Right. So that we get it straight now, and the jury understands [457] it then, while there might be exceptions, as you have indicated, where a person was—knew that they were going to leave and just asked if they can leave their bags in the room so the maid could make it up, that kind of thing, you would not charge them for the additional day even though they left an hour or two hours or perhaps three hours after the check-out time?

A. That's correct.

Q. But if for some reason they didn't do those things, in other words, didn't give you any advance notice, just came in at 6:00 o'clock and check out

(Testimony of George W. Hooker.)

it would be the normal policy to charge for that additional day?

A. At that particular time of the year, yes, definitely.

Q. Yes. That is, right over the Labor Day week end?

A. Well, yes, during the busy season. In the wintertime when you are——

Q. So that on this particular week end, under those circumstances, it would be the policy to charge for the additional day?

A. Yes.

Q. Now, in such event that person—let's say that a person checked out in such fashion of 5:00 or 6:00 o'clock on the afternoon of September first, and were charged for the additional day, they'd be paid then—well, actually they'd be paid through September second, would they not?

A. Yes. [458]

Q. To the check-out time on September 2?

A. Uh-huh.

Q. I believe when I asked you about it out here in the hall, Mr. Hooker, you indicated that you, under those circumstances, would still show that person checked out on September first even though they paid for that additional day?

A. Well, yes, and that guest ledger you have in your hand there would indicate if they had checked out on the first before 9:00 o'clock. It would show it on there. If you will bring it here I will show you what I mean.

Q. That is, if you did it?

(Testimony of George W. Hooker.)

A. No. If you will bring it up I'll explain it very thoroughly and the jury can understand. Now, your Honor, examine that and——

The Court: Show it to the jury.

A. To the jury here. You see how this ledger. The first day he checked in is \$12.00 and the two phone calls is brought down. It's brought up showing the balance the following morning of \$12.30. The next evening at 9:00, between 9:00 and 10:00 we bring the charges up for the following day and put them on a transcript, as we call it, which shows the routine business of the day. Then that \$12.00 is entered and brought down and up here for the following day. Now, if he had of came along that evening prior to 9:00 o'clock it would have showed the cash credit of \$26.95 in this column. Do you [459] follow me?

Q. Yes.

A. So definitely it shows it was after 9:00 o'clock.

Q. That is, if you were doing it that would be the correct way to do it, is that right?

A. Yes.

Q. But you didn't do it in this case?

A. No, but whether I was doing it or someone else was bringing those bills up it would be approximately at that time of the night. I can't say that it would be definitely 9:00, but along in that period.

Q. But just to make it clear now, that is the right way to do it and that is the way you would have done it, but you didn't do it in this case?

(Testimony of George W. Hooker.)

A. That is right.

Q. And you don't know of your own knowledge whether the man who did it did it right or not, do you?

A. No, I don't.

Q. So that it is possible that if Mr. Ing checked out, let's say, 5:00, 6:00 o'clock, 7:00 o'clock on Saturday night, that this relief man, whoever he was, entered it in this way showing that it was paid through September 2 because he had paid through 2:00 o'clock on September 2?

A. You are correct. There is a possibility it could be that way. [460]

Q. That is right.

A. But it's not the normal procedure.

Q. I understand that thoroughly; it's not the normal procedure. Now, at least one thing about this ledger card shows no phone calls of any kind on September second, does it?

A. No.

Q. So if Mr. Ing was in the hotel room on September 2 he made no phone calls at least?

A. Apparently not or when he checked out. Now, normally we would call the hotel and say, "Room 40 is checking out. Any phone calls?" That is where your help sometimes falls down on us. He could have possibly had some phone calls which weren't put on there. There is that possibility.

Q. At least the record shows none?

A. Well, yes.

Q. And did not—I don't want to belabor the point, but you, yourself, did not check Mr. Ing and his wife out of the hotel?

A. No.

(Testimony of George W. Hooker.)

Q. So you do not know of your own knowledge when he checked out? A. No.

The Court: Any other cross, Mr. Hepp, Mr. Nesbett?

Mr. Nesbett: No, your Honor.

The Court: Very well. You may call your next witness then. [461]

Mr. Plummer: Let me—I may want to ask Mr.—

The Court: Just a moment, please.

Mr. Plummer: Possibly one other question.

GEORGE W. HOOKER

testifies as follows on

Redirect Examination

Mr. Plummer: May I approach the witness?

The Court: You may.

By Mr. Plummer:

Q. To make sure that we have this right, Mr. Hooker, what does this entry—can you see it, sir?

A. Yes.

Q. What does this entry right here mean to you?

A. Well, it means that the bill was brought up and on the morning of the second he owed \$26.95 and on the second he paid \$26.95. That is what it means to me.

Q. And it would be on the second some time that he checked out? A. Yes.

(Testimony of George W. Hooker.)

Mr. Plummer: I think I probably have no further questions.

The Court: Any recross?

Mr. Kay: A few. [462]

GEORGE W. HOOKER

testifies as follows on

Recross-Examination

By Mr. Kay:

Q. You mentioned that the phone calls would be recorded unless the help fell down. The help do occasionally fall down?

A. They do repeatedly on that.

Mr. Kay: Thank you.

Mr. Plummer: May Mr. Hooker take these with him?

The Court: Yes. May this witness be excused?

Mr. Plummer: As far as the Government is concerned he can go back to work.

The Court: Very well.

(Thereupon, the witness was excused and left the stand.)

The Court: You may call your next witness.

Mr. Plummer: Your Honor, it's about a quarter to 5:00. Are we going to quit at 5:00 o'clock?

The Court: We did want to.

Mr. Plummer: Could we quit 12 minutes early tonight?

The Court: No objection. If there isn't any ob-

jection on the part of counsel, with that in mind, could we start a little earlier in the morning?

Mr. Plummer: I would have no objection, your Honor.

The Court: I am sorry. I am not able to go to court before 10:00 o'clock tomorrow morning, therefore, we will have to continue it until 10:00 a.m. Ladies and gentlemen of the jury, [463] I must instruct you again, as you know, not to discuss this case among yourselves, nor are you permitted to let others discuss it with you and the court will stand adjourned until tomorrow morning at the hour of 10:00 a.m.

(Thereupon, at 4:50 o'clock p.m. February 25, 1958, court was adjourned to the next morning, this case to be resumed at 10:00 o'clock a.m., February 26, 1958.) [464]

The Court: Will counsel stipulate that all the jurors are present in the courtroom?

Mr. Plummer: Yes, your Honor.

Mr. Kay: So stipulated.

Mr. Nesbett: Your Honor, I have served Mr. Plummer with a motion which I want to pass up to the bench.

The Court: Very well. Very well, you may call your next witness, Mr. Plummer.

Mr. Plummer: Would you call the witness. He is right outside the door.

Mr. Nesbett: Does your Honor reserve any ruling on the motion?

The Court: Well, counsel, I can't, of course,

even do that or consider it until such time as we have had a chance to argue it. The Court hasn't even considered the motion. All I have done is read the motion and I am not in a position to reserve and/or to rule at this time until I hear counsel argue. Now you may swear the witness.

CLAUDE KENNETH BROWNFIELD,
called as a witness for and on behalf of the Plaintiff,
and being first duly sworn, testifies as follows on

Direct Examination

Mr. Kay: May we approach the bench prior to the [467] witness' testimony?

The Court: Yes.

(Thereupon, all counsel approached the bench, together with the Court Reporter, and the following proceedings were had out of the hearing of the jury:)

Mr. Kay: Now, I am informed that this witness is a witness by the name of Brownfield. You recall that the Court inquired at the commencement of the trial as to the witnesses which Mr. Plummer anticipated calling and other than those named on the indictment, and Mr. Plummer indicated that he could give the Court the names of no others, that—at least that he did not name, specifically did not name Brownfield. We anticipate that the testimony, or believe that the testimony of the witness Brownfield must have been known to Mr. Plummer at that time and that the reason for not naming the fact

(Testimony of Claude Kenneth Brownfield.)

that Brownfield intended to be a witness was planned to take the defense by surprise at the last possible moment just before the conclusion of the case, and for that reason, if this witness is now going to testify, we would like to have a continuance of the—even an hour at the close of the direct testimony, or reasonable continuance for a short time in order to meet the unexpected surprise of having the witness Brownfield appear, without any advice to the fact that he was to be a witness in the case although that fact must have been known at the commencement of the trial. [468]

Mr. Plummer: May I be heard?

The Court: Well, you won't object to the continuance for an hour?

Mr. Plummer: Possibly not for an hour. I will advise the Court, however, that the Court did sign an order, which I am sure is in the file and has been since Friday or—Thursday or Friday of last week. We asked for a subpoena ad testificandum and it certainly proves—the perusal of the court file will show it possibly and as far as me knowing he was going to be here, the Court will please be advised and will recall that at the start of the trial I said there is one possible witness who I did not know we'd tender to give testimony or not and told the Court that I would refer to the—delay my opening until after I knew whether or not he would be here. I didn't know until after I had made my opening, and, in fact, the matter is I didn't know whether, first, he would actually appear and testify, and,

(Testimony of Claude Kenneth Brownfield.)

second—or, first, appear, and, second, whether or not he would testify until, I would say, the latter part of last week.

The Court: Now, can you advise the Court when this witness did appear?

Mr. Plummer: The witness, I think, came in, and I don't—I would not like to be held to this date, but as I think he came in over the week end, some time last week end.

The Court: Well, those facts could be made known to counsel and court, could it not? [469]

Mr. Plummer: Oh, yes, we could call James Chenoweth and he could give the exact date. He was brought back by the penal institution by Chenoweth.

The Court: Could we ask Mr. Williamson to come to the bench a moment.

(Thereupon, United States Marshal Williamson approached the bench.)

The Court: Mr. Williamson, could you advise the Court and counsel when Mr. Brownfield was returned to Anchorage—the date—the exact date?

Mr. Williamson: He arrived on a Thursday. It must have been last Thursday.

The Court: Thank you.

Mr. Kay: May I further advise the Court Mr. T. N. Gore represents Brownfield, and, in fact, represents him on a trial in the case which is supposed to come to trial in Fairbanks next Monday. Mr. Gore yesterday, from my office, or was it the day

(Testimony of Claude Kenneth Brownfield.)

before yesterday, called Fairbanks in an effort to learn whether Mr. Brownfield had been returned to the Territory of Alaska, in accordance with the order of the Court, District Court in Fairbanks, requiring him to be returned to Fairbanks on the 15th. He learned from the jailer up there that they had not heard of Brownfield and had no idea when he was to be returned to the Territory of Alaska. Just yesterday by co-counsel, Mr. Billy Taylor, in Fairbanks, the United States Attorney up there would not reveal to [470] Mr. Taylor the whereabouts of Mr. Brownfield and whether or not he was to be returned to the Territory of Alaska, so I say if we add these things up, your Honor, it's been a deliberate attempt to take the defense completely by surprise by the appearance of Brownfield as one of the last witnesses in the case; a strategy for which I do not blame the United States Attorney, but I think the Court ought to understand it and view the position of the defense under those circumstances with a reasonable——

Mr. Plummer: I further repeat what I have already said and——

The Court: No use of repeating.

Mr. Plummer: Well, that the Court's order ordering him back here has been in the court file since the date it was issued.

Mr. Kay: Well, I don't think anybody would say—of course, I checked the day the trial commenced to see what subpoenas had been issued and none were in the file at that time.

(Testimony of Claude Kenneth Brownfield.)

The Court: Counsel, I am sure that has been in the file for considerably longer than that.

Mr. Kay: At least it was not—I didn't come across it. I don't think there would be any burden on the defense to examine it, continually examine the court file day after day when the trial commences. When did this trial commence? It was last Wednesday, your Honor, and I don't think—Mr. Plummer says Thursday. [471]

The Court: No, a week ago Thursday.

Mr. Gore: Your Honor, I'd like to be heard just a moment, temporarily, on this matter. As Mr. Kay said, I am attorney of record in the Fourth Division for Mr. Brownfield in the case set for trial next Monday morning. Last fall I attempted to require the Government to bring Mr. Brownfield back to Fairbanks for arraignment on this case. To the best of my knowledge Mr. Brownfield has never been arraigned on the charges of which he is scheduled to go to trial on next Monday morning. Now, I would like an opportunity, due to the fact that I am his attorney of record in those cases, to confer with Mr. Brownfield before he makes any statements of any kind from this witness stand and I would like Mr. Brownfield to make a statement for the record that I am no longer his attorney of record and release me of any further responsibility and liability in connection with any of the defense of any crimes of which he is accused.

The Court: Well, may I inquire, Mr. Gore. Is

(Testimony of Claude Kenneth Brownfield.)
the testimony that will be elicited at this trial connected with the case in Fairbanks?

Mr. Gore: Yes, your Honor, it is. I think they are inseparable.

Mr. Plummer: I am sure it is not, your Honor, and I am sure Mr. Brownfield would so release Mr. Gore, probably with pleasure.

Mr. Kay: Well, you seem to know a lot more of [472] Mr. Brownfield's attitude than any of us. I don't think that remark should stand in the record. Mr. Brownfield——

Mr. Gore: I think that that is a snide remark.

Mr. Plummer: I apologize to the Court and to Mr.—I got carried away.

The Court: This petition for writ of habeas corpus ad testificandum was filed in this court on February 17.

Mr. Kay: Not served on any counsel for the defense.

The Court: Well, of course, subpoenas need not be, and also the order was signed on the same date. This file——

Mr. Kay: Subpoena or writ—petition for writ of habeas corpus, why wouldn't that have to be served on counsel?

The Court: Because of the fact that this witness is not a defendant in this case. Well, I think the record is rather clear. You have asked for an hour. The motion is granted.

Mr. Gore: Your Honor, I'd like a——

(Testimony of Claude Kenneth Brownfield.)

Mr. Plummer: That will be at the conclusion of the witness' testimony?

The Court: Well, at the conclusion of the Government's case. Isn't that what you wanted?

Mr. Gore: Yes.

The Court: Just a moment, please, Mr. Nesbett.

Mr. Gore: I want a ruling on——

The Court: Mr. Gore wants to make another statement here. Now, you may proceed. [473]

Mr. Gore: I previously made a request of the Court that I be permitted to talk to this witness prior to his giving any testimony for the reason that, in my opinion, any testimony that he gives in this case will be inseparably tied up with the charges now pending against Mr. Brownfield in the Fourth Division, and as his attorney of record in the case now pending in Fairbanks, I think it is my right and it's also my duty as attorney to talk to him prior to his making any statements in this court which might have an adverse effect on the case which is now pending in Fairbanks.

The Court: Mr. Brownfield, would you step down, please.

(Thereupon, Mr. Brownfield approached the bench.)

The Court: Mr. Brownfield, does Mr. Gore represent you?

Mr. Brownfield: Mr. Gore has represented me, but he doesn't represent me at the present time.

The Court: Very well, motion is denied then.

Mr. Gore: Then, your Honor, I would like Mr.

(Testimony of Claude Kenneth Brownfield.)

Brownfield to make a statement of record for the record here that he is releasing me from any further responsibility in connection with the criminal charges now pending against him in the Fourth Judicial Division of Alaska.

The Court: Are you prepared to make that statement?

Mr. Brownfield: Yes, sir.

The Court: Very well. Thank you.

(Thereupon, all counsel, together with the Court [474] Reporter, resumed their respective seats, and the following proceedings were had in the presence of the jury:)

The Court: You may proceed, counsel.

By Mr. Plummer:

Q. Would you please state your name, sir?

A. Claude Kenneth Brownfield.

Q. And what is your home address, sir?

A. 5900 West 107th Place, Chicago Ridge, Illinois.

Q. And how long have you lived in this location, sir?

A. Approximately a year and a half.

Q. Do you know the defendant in this case, James Burton Ing?

A. Yes, sir, I do.

Q. Can you tell me when you first became acquainted with Mr. Ing?

A. In the spring of 1956.

Q. And would you be good enough to tell the Court and jury where that acquaintanceship occurred?

(Testimony of Claude Kenneth Brownfield.)

A. This acquaintanceship occurred in Chicago.

Q. Could you be more specific? Could you name any location in Chicago where you met the defendant?

A. At the tavern where I was working at 4700 South Wentworth.

Q. And would you be good enough, sir, to tell us how you became acquainted with Mr. Ing?

A. We had several drinks together and a friend of mine introduced [475] me to him.

Q. And did you have these drinks that you mentioned? Where did you have them?

A. Oh, at the tavern where I worked and at several other taverns around Chicago.

Q. Now, how long did your association with Mr. Ing last on this occasion, sir?

A. Approximately two weeks.

Q. Now, during this two-week period did you have conversations back and forth with Mr. Ing?

A. Yes, we did.

Q. And do you recall the conversation in which the Territory of Alaska was mentioned?

A. Yes, sir, I do.

Q. And would you tell us what that conversation was?

The Court: Counsel, for the Court's sake, I'd like to have the foundation laid, time, place, and persons present, please.

Q. (By Mr. Plummer): Do you remember the time that this—or, the place where this conversation occurred?

(Testimony of Claude Kenneth Brownfield.)

A. It occurred in approximately the latter part of February or early part of March, 1956, at 4700 South Wentworth.

Q. And would you tell me the persons present?

A. Mr. Ing and myself.

Q. Yes. Now, would you tell me if—what this conversation [476] was about, the gist of the conversation?

A. We made arrangements to buy some dice and cards and several things, and also the point was brought up that how easy it was to pass checks in Alaska.

Q. And did the defendant Ing, or was there any other talk at that time and place about Alaska?

A. At that time, Mr. Ing stated that he was trying to get something lined up in the form of checks in Alaska and would I be interested in taking part in it.

Q. And what was your reply, sir?

A. I replied that I would.

Q. Now, did you subsequently have any more conversation with Mr. Ing about this matter during this association?

A. Over the period of two weeks of approximately the spring, early spring of 1956, we talked about it several times and he told me he would contact me later.

Q. And did he in fact contact you later?

A. Yes, he did.

Q. And how did he contact you?

(Testimony of Claude Kenneth Brownfield.)

A. He wrote me a letter some time in April or May, about that time.

Q. And do you have that letter in your possession, sir? A. No, sir, I don't.

Q. What happened to the letter?

A. I destroyed the letter. [477]

Q. Would you tell us what the letter was about?

A. In this letter, he said that a friend of his would probably contact me later; that he had something in the line of checks worked out and if I was still interested to let him know.

Q. And did he give you any other instructions in that letter?

A. In this letter, he stated that it would take one or two fellows to pass checks and asked me to contact two friends in Peoria.

Q. And did you, in fact, do so?

A. Yes, sir, I did.

Q. Will you tell me what their names are?

A. Robert Hausam and Eugene Eckley.

The Court: Spell the names, please.

A. H-a-u-s-a-m and E-c-k-l-e-y.

The Court: Thank you.

Q. (By Mr. Plummer): Did you have any further contact with the defendant Ing—from the defendant Ing, that is?

A. I received one or two letters over a two or three months period of about April, May, June and July.

Q. And do you have these letters?

A. No, sir, I do not.

(Testimony of Claude Kenneth Brownfield.)

Q. Would you tell me what their contents were?

The Court: Pardon me—— [478]

Q. (By Mr. Plummer): I mean, what happened to the letters, sir?

A. I destroyed them.

Q. And why did you destroy them?

A. I was afraid to leave them around the tavern and afraid to take them home; I didn't want anyone else to see them.

Q. And will you tell me, sir, what the contents of the letters were?

A. In the majority of the letters we corresponded about the fact of passing checks in Alaska and in the last letter, Mr. Ing stated that a friend of his would contact me and give me the checks and that the three of us were to be in Alaska—in Fairbanks, rather, the last week of August, 1956.

Q. Would you tell me, if you know, why this particular time was picked?

A. This time was picked because we intended to pass checks over the Labor Day week end which would give us one extra holiday when the banks would be closed.

Q. Now, were you in fact contacted by the friend as you were advised in the letter that you would be?

A. Yes, sir; a fellow that I did not know brought a box to the tavern just before I left Chicago, in the latter week of August.

Q. And did you open the box?

A. Yes, sir, I did.

(Testimony of Claude Kenneth Brownfield.)

Q. And would you be good enough to tell us what the box contained? [479]

A. This box contained a check protector, two birth certificates, and approximately four hundred checks that appeared to be Morrison-Knudsen payroll checks.

Q. Now, did you, Mr. Eckley and Mr. Hausam come to Alaska as instructed?

A. Yes, sir, we did.

Q. Did you bring the checks with you?

A. Yes, sir, I did.

Q. Now, do you know what kind of checks these were, sir?

A. As I said, they appeared to be Morrison-Knudsen payroll checks. They were drawn on the First National Bank of Anchorage and Morrison-Knudsen's home office was listed as Boise, Idaho. These checks were signed with the name Guy King—I don't remember exactly if it was G. M. King, or Guy King, but the rest of the check was blank.

Q. Did you in fact, the three of you then proceed on to Alaska as contemplated?

A. Yes, sir, we did.

Q. And where did you arrive?

A. We arrived at the airport in Fairbanks.

Q. And what happened, if anything, when you arrived at the airport in Fairbanks?

A. We went from the airport to the Fairbanks Country Club.

Q. And what did you do with the checks in the

(Testimony of Claude Kenneth Brownfield.)

suitcase containing the checks, if you know? [480]

A. I gave the checks and the suitcase to Mr. Ing.

Q. Out at the Country Club? A. Yes, sir.

Q. Now, did you see Mr. Ing—first, would you tell us what day you arrived in Fairbanks, if you know, sir?

A. I am not positive, but I am reasonably sure it was August 27th.

Q. And about what time of the day, if you recall? A. Early in the morning.

Q. And did you have a conversation with Mr. Ing the following day? A. Yes, sir, I did.

Q. And would you tell me where this conversation occurred?

A. This conversation was between Mr. Ing and myself at the country club in Fairbanks.

Q. And you recall about what time of the day it was? A. I believe it was in the afternoon.

Q. And would you be good enough, sir, to tell me what the conversation was about?

A. The conversation was about the proposed deal of passing these checks.

Q. And can you recall anything else about the conversation at that time, sir?

A. During this time, I could not understand how three people could pass so many checks in Fairbanks, and I asked about [481] this.

Q. And what was Mr. Ing's response when you asked him, sir?

A. He replied that he had arranged people that

(Testimony of Claude Kenneth Brownfield.)

I did not know and was going to have them pass checks in Anchorage.

Q. And did he indicate the time that the passing in Anchorage was going to take place, sir?

A. The time was to be the same time that I was passing checks in Fairbanks, the Labor Day week end.

Q. And was anything said about the termination of the operation, when it was supposed to end?

A. I was to stop passing checks at 9:00 o'clock Labor Day evening and at that time, was to catch a plane back to Seattle and he informed me that everybody would stop passing checks at approximately that time and catch planes out of Alaska.

Q. Now, during the course of the conversation on that occasion, did Mr. Ing make any remarks about the checks that you brought up and were going to pass?

A. At that time, he showed me what he said was a genuine Morrison-Knudsen check and pointed out that they were very similar, that the main difference was that the Morrison-Knudsen payroll checks were watermarked with an "M-K" and the other checks were merely watermarked on safety paper.

Q. Now, these checks that you turned over to Mr. Ing, were they completed as to the name of the payee and the amounts of the check and checks and so on? [482]

A. No, sir, they were not.

Q. And would you tell me who, if you know, completed these checks? A. I——

(Testimony of Claude Kenneth Brownfield.)

Q. (Continuing): —the names of the payee and the amounts?

A. I completed a great number of them, typing the names and the amount of the check and Mr. Ing did part of them and the two of us run them through the check protector.

Q. And where did this operation occur, sir?

A. In the trailer that was parked behind the Fairbanks Country Club.

Mr. Plummer: May these be marked for identification? May the record reflect that I am now showing Plaintiff's Exhibits for identification only 26 and 27 to counsel?

The Court: Very well, without objection.

(Thereupon, the documents were handed to defense counsel.)

Mr. Plummer: May I approach the witness, your Honor?

The Court: You may.

Q. (By Mr. Plummer): Sir, I hand you what has been marked for identification only as Plaintiff's Exhibit 26 and Plaintiff's Exhibit 27 and ask you to tell me what they are, if you know?

A. Those are the two birth certificates that I brought from Chicago.

Q. And where did you originally get them? [483]

A. They were given to me with the checks and the check protector before I left for Alaska.

Q. In the box that was delivered at the tavern?

A. Yes, sir.

(Testimony of Claude Kenneth Brownfield.)

Mr. Plummer: May I approach the witness?

The Court: You may.

Mr. Plummer: I offer these in evidence at this time.

The Court: Is there objection?

Mr. Gore: Object to them, your Honor, as being no relevancy shown between the birth certificates and the testimony of this witness in connection with the commission of any offense here in Anchorage, and, certainly, they are in no way connected up with any of the defendants now on trial, but purport to be birth certificates of a person named Peter Thompson and some other person and there is no way of showing that they are in any way connected with the defendants on trial.

Mr. Plummer: I don't believe Mr. Gore is listening to the testimony, otherwise he would have heard this witness testify that the defendant Ing arranged for a person to come and leave a box at his place, the box contained the checks, the check protector, and these two birth certificates. Certainly——

Mr. Kay: What does that have to do with the issue before this court on this trial?

The Court: Objection overruled. It may be marked Government's Exhibits Nos. 26 and 27.

Q. (By Mr. Plummer): Now, in addition to the birth certificates which have just been admitted, did you have any other identification or was any other identification furnished to you by the defendant Ing subsequent to your arrival in Fairbanks?

(Testimony of Claude Kenneth Brownfield.)

Mr. Kay: Object as leading.

Mr. Plummer: I am sorry.

Q. (By Mr. Plummer): Did you have any other identification other than the birth certificates?

A. Yes, sir, I did.

Q. And would you be good enough to tell me what they were?

A. I had several of the small isinglass forms that are taken from billfolds and filled these out and signed them under the name of Charles Lappa. I had two drivers licenses that were made in the name of Charles Lappa and I had one identification card that I used and which I pasted a small picture of myself on this.

Q. Where did you obtain this picture?

A. Mr. Ing took this picture of me at the country club.

Mr. Plummer: Would you mark these for identification?

Deputy Clerk: All as one?

Mr. Plummer: I think probably separately.

The Court: Just a moment, please. It may be marked 28, 29 and 30. [485]

Mr. Kay: I believe it starts with 29.

The Court: As I understood, 26 and 27 were the other two.

Mr. Kay: I thought it was 27 and 28. I am sorry.

Q. (By Mr. Plummer): Would you be good enough to tell us, sir, while we are waiting, where you obtained this identification?

A. From Mr. Ing.

(Testimony of Claude Kenneth Brownfield.)

Mr. Nesbett: What did he say?

The Court: "From Mr. Ing."

Mr. Plummer: May the record reflect that I'm now showing 28, 29 and 30 for identification to counsel?

(Thereupon, the documents were handed to defense counsel and thereafter returned to Mr. Plummer.)

Mr. Plummer: May I ask leave of the Court to approach the witness?

The Court: You may.

Q. (By Mr. Plummer): I hand you, sir, what's been marked for identification only as Plaintiff's Exhibits 28, 29 and 30 and ask you if you will be good enough to tell me what they are, if you know?

A. This is the identification that was given to me by Mr. Ing and this is the picture that he took of me.

The Court: Now, are you referring to—which one?

A. Number 30. [486]

Mr. Plummer: I offer Number 30 in evidence, your Honor.

The Court: Is there objection? (Pause.) It may be admitted and marked Plaintiff's Exhibit No. 30.

A. No. 28 is a driver's license that was given me by Mr. Ing.

Mr. Plummer: May I approach the witness?

The Court: You may.

Mr. Plummer: I offer No. 28 in evidence.

(Testimony of Claude Kenneth Brownfield.)

The Court: Is there objection?

Mr. Kay: No objection.

The Court: Hearing none, it may be admitted and marked Government's Exhibit No. 28.

Q. (By Mr. Plummer): And would you look at the other object there?

A. No. 29 was not given to me by Mr. Ing.

Q. Very good, sir.

The Court: What is it?

Q. (By Mr. Plummer): Would you tell me what it is?

A. It's a card that denotes membership in the Fairbanks Golf and Country Club.

Q. Do you know where you obtained that?

A. Yes, sir, that was sent to me by a friend from Fairbanks. It was more or less just a souvenir.

The Court: Before or after the incident in question?

A. Quite some time before. [487]

The Court: Thank you.

Q. (By Mr. Plummer): Now, was it your testimony, sir, that Mr. Ing took the picture with the camera which is now pasted on Plaintiff's Exhibit No. 30, the driver's license? A. Yes.

Mr. Kay: Repetitious.

The Court: Objection sustained.

Mr. Plummer: It's just, your Honor—it's preliminary.

The Court: Well, excepting this, that it's repetitious as Mr. Kay has pointed out. You may proceed.

Q. (By Mr. Plummer): Were any other pic-

(Testimony of Claude Kenneth Brownfield.)

tures taken of any other individuals at that time by Mr. Ing?

A. Yes, sir, at that time he took pictures of Robert Hausam and Eugene Eckley.

Mr. Kay: Object to that and ask that it be stricken; has no relevance to connect any issues in this case. It relates entirely to evidence concerning a separate incident in the City of Fairbanks.

The Court: Objection overruled. It may stand. You may proceed.

Q. (By Mr. Plummer): Now, Mr. Brownfield, will you tell me, if you know, who purchased the tickets from—for the transportation of you [488] three from Chicago to Fairbanks? A. I did.

Q. And do you recall about how much it cost?

A. A little over \$500.00.

Q. And were you ever reimbursed for this expenditure? A. Yes, sir, I was.

Q. And by whom? A. Mr. Ing.

Q. And would you tell me when and where this occurred?

A. The day after we arrived in Fairbanks Mr. Ing gave me fifty \$10.00 bills at the Fairbanks Country Club. At that time he stated that this would take care of the transportation, the money that we had used up for our transportation.

Q. Now, did you have an agreement with anybody about passing the checks?

A. Yes, sir, I did.

Q. With whom? A. Mr. Ing.

(Testimony of Claude Kenneth Brownfield.)

Q. And would you tell us what that agreement was?

A. I was to keep half of the money that I received from cashing the checks.

Q. And what was supposed to happen to the other half? A. It was to go to Mr. Ing.

Q. Now, Mr. Brownfield, have you even been convicted of a crime?

A. Yes, sir, I have. [489]

Q. Would you tell us what crimes and——

Mr. Kay: This has been done before, but I object to the United States Attorney impeaching his own witness.

Mr. Plummer: I am not impeaching.

Mr. Kay: Yes, your Honor, proof of the commission of a crime is only to show impeachment of a witness. Now, it's the right, prerogative of the defense to impeach the witness, not the United States Attorney, and I object to it.

The Court: The objection is made. The objection will have to be sustained, Mr. Plummer.

Mr. Plummer: Very well. May I have just a moment, your Honor?

The Court: You may.

Mr. Plummer: May I approach the witness?

The Court: You may.

Q. (By Mr. Plummer): Mr. Brownfield, I'll ask you to look at these exhibits which are Plaintiff's Exhibits 1 through 19 and 21 and tell me if these are the checks that you brought from Chicago?

A. May I take it out of the cellophane wrapper?

(Testimony of Claude Kenneth Brownfield.)

Q. Yes, sir.

The Court: Can you help the witness, Mr. Plummer?

A. I don't need to take it out; I'm sorry. This (indicating) is one of the checks that I brought to Alaska.

The Court: That you—what are you referring to when [490] you say "this"? Look on the front, please.

A. I believe this is Exhibit No. 1.

Q. (By Mr. Plummer): Yes, sir, and would you hastily glance through the others and see if that is true with the others?

A. Exhibit No. 2 is one of the checks that I brought to Alaska.

Q. And would you run through the balance of the checks that you have there in front of you, sir?

A. I am sure that I brought all those (indicating) checks to Alaska.

Q. Thank you.

Mr. Plummer: Your Honor, may I approach the witness?

The Court: You may.

Q. (By Mr. Plummer): And what did you do with them after you brought them to Alaska?

A. After I brought them to Alaska, I turned them over to James Ing.

Mr. Plummer: I have no further questions, your Honor.

The Court: You may cross-examine then.

Mr. Kay: Your Honor, we'd like to take at least

(Testimony of Claude Kenneth Brownfield.)

a portion of the time which was accorded to us at the bench prior to cross-examination of this witness. As we said then, it takes us by surprise and we want an opportunity to confer before——

The Court: Well, supposing we did this then—I, [491] of course, don't want to delay the trial any longer, but suppose we recess now until 2:00 p.m. That would give you all the time that you desire. Any objection, Mr. Plummer?

Mr. Plummer: No, it will be all right, your Honor. We are wasting a half hour and we were late getting started and we are wasting a half hour now. I don't see why they can't cross-examine him until noon and confer and resume their cross-examination this afternoon.

Mr. Kay: I don't see why Mr. Plummer couldn't have informed us that Mr. Brownfield was going to be a witness and we would have had an opportunity to examine him. I don't think a half hour in the course of testimony is a waste of time, your Honor, although Mr. Plummer may feel so.

The Court: Well——

Mr. Plummer: May I through the Court, advise Mr. Kay that there has been notice since the last week in the court's record that Mr. Brownfield might be a possible witness. If he had taken the trouble to look at the court record——

The Court: Well, let's not go any longer. We are not accomplishing anything thereby. For the reasons stated by the defense, ladies and gentlemen of the jury, the trial of this case will be continued

(Testimony of Claude Kenneth Brownfield.)

until 2:00 p.m. this afternoon. For information purposes only, how many more witnesses do you intend to call, Mr. Plummer? No movement in the courtroom, please.

Mr. Plummer: I may not call any more or I may call [492] one or possibly two. They will be short witnesses, if called.

The Court: I see. That is so that counsel will have notice for the defense as to when they might go to trial in their case.

Mr. Plummer: I would say that possibly not over a half an hour after they have completed their cross-examination and I have completed by recross or my rebuttal examination, or whatever is the proper name, that my—redirect examination, that the Government will rest its case.

The Court: Very well. Ladies and gentlemen of the jury, then, I must instruct you not to discuss this case among yourselves nor are you permitted to let others discuss it with you, as you have heretofore been instructed.

The trial of this case will be continued until 2:00 p.m., but this court will go into recess until 1:30.

(Whereupon, at 11:25 o'clock a.m., the court continued the cause to 2:00 p.m. of the same day.)

(At 2:00 o'clock p.m., all counsel and defendants being present, the trial of said cause was resumed:)

The Court: Will counsel stipulate that all the jurors are back and present in the box?

(Testimony of Claude Kenneth Brownfield.)

Mr. Kay: Yes, your Honor.

Mr. Plummer: Yes, your Honor. [493]

Mr. Gore: Yes, your Honor.

The Court: Thank you. Very well, you may cross-examine.

CLAUDE KENNETH BROWNFIELD
testifies as follows on

Cross-Examination

By Mr. Gore:

Q. Mr. Brownfield, you testified this morning that you first met Mr. Ing in a bar in the City of Chicago, did you not? A. Yes, sir.

Mr. Plummer: I object to the form of the question. He should say "did you."

The Court: Yes. Objection sustained.

Q. (By Mr. Gore): Mr. Brownfield, did you testify this morning that you first met Mr. Ing in a bar in the City of Chicago, Illinois?

A. Yes, sir, I did.

Q. Can you give me the approximate date on which you first met Mr. Ing?

A. That was in February or March, I believe, of 1956.

Q. Do you remember the name and the address of the bar?

A. Fuller Park Tavern, 4700 South Wentworth.

Q. What was your employment at the time?

A. I worked at this bar. [494]

Q. How long had you been working there?

(Testimony of Claude Kenneth Brownfield.)

A. Approximately two years.

Q. And who was the owner of the bar?

A. Joseph Janas.

Q. And how do you spell that last name?

A. J-a-n-a-s.

Q. Is he the person commonly known and referred to as Uncle Joe?

A. Not to my knowledge, no.

Q. Will you state the circumstances under which you first met Mr. Ing?

A. I believe he was at the tavern drinking.

Q. And how did the conversation between you and Mr. Ing come up?

A. I believe he was introduced to me by a friend of mine.

Q. And who was that friend?

A. Frank Padotey.

Q. How long had you known Mr. Padotey?

A. Seven or eight years.

Q. At that time, as a matter of fact, you were working for Mr. Padotey, were you not?

A. I was working for Mr. Janas.

Q. Did Mr. Padotey have any interest in the bar in which you were working?

A. Not to my knowledge.

Q. Did Mr. Padotey hang around that bar very much?

A. Mr. Padotey and I were friends and I saw him quite often. [495]

Q. When did you first meet Mr. Padotey?

A. I would say about 1948.

(Testimony of Claude Kenneth Brownfield.)

Q. Under what circumstances did you meet Mr. Padotey?

Mr. Plummer: I object to the question. It's completely outside the scope of the direct examination and has no material bearing in the issue in this case.

The Court: What is the materiality, Mr. Gore?

Mr. Gore: Your Honor, it's—if the counsel for the Government wishes me to state——

Mr. Plummer: Let's approach the bench if it's anything that is going to be prejudicial. May we approach the bench, your Honor?

The Court: Yes, you may.

(Thereupon, all counsel approached the bench, together with the Court Reporter, and the following proceedings were had out of the hearing of the jury:)

Mr. Gore: This examination is directed to obtain from the witness statements to the effect that he first met Padotey when they were cell mates in the prison of the State of Illinois and that that association continued for quite a long period of time and that after he was released from the penitentiary he was employed by Mr. Padotey and that Mr. Padotey subsequent to—in the early part of 1956 came to Fairbanks, Alaska, with a person by the name of John Volk, who was also a prisoner in the [496] penitentiary at the same time, and that Mr. Padotey then became engaged in business with Mr. Ing at the Fairbanks Golf and Country Club.

Mr. Plummer: Your Honor, may I be heard?

(Testimony of Claude Kenneth Brownfield.)

Mr. Kay: Well, I wanted to supplement that by saying that it is going to be, and I think we might as well say so, under the theory of the defense, that Frank Padotey had a very large and unknown interest in this transaction and that the witness Brownfield—we should be allowed to interrogate the witness Brownfield concerning his relationship with the man Padotey and the relationship, if any, in which Padotey had in this nature.

The Court: Well, I will concede if by chance you connect it up with the case, but so far it has no relevancy to the case.

Mr. Kay: That is the point. We have got a perfect right to—there, naturally, would not be any if we had nothing but Government witnesses, but we have a right to examine this man.

The Court: That is true, on relevant facts and material facts.

Mr. Kay: Right, and that is exceedingly relevant to the theory of the defense. If—the theory of the defense is the connection here was with Padotey and not with him, that is certainly vital and material and should not be limited on cross-examination of this witness. [497]

Mr. Gore: He has testified, your Honor, that he was introduced by a friend and this friend was Padotey and I think then, we are entitled to establish the relationship between this friend who made the so-called original introduction, especially when we can connect it up; that that friend later became

(Testimony of Claude Kenneth Brownfield.)

a partner in the very business which Mr. Ing was engaged.

The Court: But, counsel, supposing that this Padotey had a thousand other businesses, what is the materiality in this case? And supposing that Ing and Padotey had inter-relationship in other businesses, what is the materiality in that case? Padotey is now not charged.

Mr. Kay: Not by the Government, but we don't know what the relationship is, but we believe we have a perfect right to show that it may very well be that Padotey is the man who had this connection with this defendant over these very checks.

The Court: Of course, that is a question of fact for the jury.

Mr. Kay: I know, and that is why we have the right to cross-examine him about it and we intend to call other witnesses.

Mr. Plummer: Before you go, may I be heard?

Mr. Nesbett: I'd like to be heard too.

The Court: Just a moment. Mr. Gore, do you have something else?

Mr. Gore: He has testified, your Honor, as to his reasons for coming to Fairbanks and persons who actually brought [498] him there and I think we are entitled to go into that purpose, to make the showing, if we can, as to a different person who actually introduced or influenced his trip to Fairbanks.

The Court: Well, wouldn't you be entitled to maybe call him as an adverse witness?

(Testimony of Claude Kenneth Brownfield.)

Mr. Kay: Why should we have to, your Honor?

The Court: That's—I am talking to Mr. Gore.

Mr. Gore: Your Honor, he's on the stand now for the purpose of cross-examination relative to his participation and the whole theory of the Government's case—they went right into his reasons for coming to Alaska and his acquaintances and I certainly think we should be entitled to cross-examine him on that line. I realize that if we chose, after we put on witnesses, we could recall him as an adverse witness, but I certainly think the proper time to do it is on cross-examination.

The Court: Mr. Nesbett, do you want to be heard?

Mr. Nesbett: I was just going to point out, your Honor, that the Government is—the jury is going to be asked to find a conspiracy here and, certainly, all evidence showing how Brownfield happened to be connected with the case, even though it may be going back a number of years, would be relevant.

The Court: Is it your theory that this indictment is under conspiracy?

Mr. Kay: No. The theory of the Government has been, however, that it was a concerted scheme to cash each one of [499] these checks and now they have brought in four hundred checks transported from Chicago by this witness, part of which were passed in Fairbanks and a part of which were passed in Anchorage—part of which were passed in Fairbanks by this very witness and the man he's now admitted that Padotey is the man that intro-

(Testimony of Claude Kenneth Brownfield.)

duced them. Padotey had the Country Club. The evidence will show that Padotey left two days after this offense was committed and hasn't been seen since and we have every right to examine this man fully with his connection of the witness Padotey.

The Court: Mr. Hepp, do you wish to be heard?

Mr. Hepp: No, I have nothing to say that hasn't been said.

The Court: Mr. Plummer.

Mr. Plummer: Yes, your Honor, I have no objection to their interrogating this witness about his association or his knowledge of the fellow Padotey so long as it's material. I do not believe it is material, but if they are going to do it, they should do so properly and there is not a counsel standing at this table who know what Mr. Gore was going to do is improper. It is set out in the statute you cannot ask humiliating or improper questions. The only thing you can do is ask if he has been convicted of a crime and you know you can't ask him, especially if you know in advance that—bring out the fact that they met in prison. That is very, very improper.

Mr. Kay: Under the statute you can impeach a witness, [500] certainly, by conviction of a crime, but do you mean to say that it's improper to—if a witness met a material person in the penitentiary that just simply because he met him in a penitentiary you can't ask him about it?

Mr. Plummer: There is no indication that Mr. Padotey is a material person. He's certainly not

(Testimony of Claude Kenneth Brownfield.)

been mentioned to date in the testimony except——

Mr. Kay: Carefully not mentioned by the Government, of course.

Mr. Plummer: If it became a material witness in your presentation of the case, so that it is material, then I suggest you recall the witness Brownfield and interrogate him at that time.

The Court: Objection sustained at this time.

Mr. Kay: You mean to this particular question?

The Court: Yes.

(Thereupon, all counsel and the Court Reporter resumed their respective seats, and the following proceedings were had in the presence of the jury:)

Q. (By Mr. Gore): You stated you met Mr. Padotey in 1948, did you not? A. Yes, sir.

Q. Do you know a gentleman by the name of John Volk? A. Yes, sir, I do.

Q. How long have you known Mr. Volk? [501]

A. Since about 1949.

The Court: How do you spell that name, Mr. Brownfield?

A. V-o-l-k.

The Court: Thank you.

Q. (By Mr. Gore): Did you have occasion to see either Mr. Padotey or Mr. Volk after your arrival in Fairbanks in the latter part of August, 1956?

A. I did see Mr. Padotey, but I don't recall if I saw Mr. Volk or not.

(Testimony of Claude Kenneth Brownfield.)

Q. What was Mr. Padotey's occupation at the time you saw him in August, 1956?

A. He was working for Mr. Ing.

Q. Do you know the nature of that relationship, was it as a partner or as an employee?

A. I am not positive.

Q. Do you know a gentleman by the name of John Scott?

A. I think I met him, yes.

Q. Did you see very much of either Mr. Volk or Mr. Padotey after your arrival in Fairbanks?

A. I saw Mr. Padotey several times at the Country Club.

Q. Do you know what, if any, connection Mr. Volk had with this general check passing scheme?

A. No, sir, I don't.

Q. Did you get to know Mr. Volk pretty well during your [502] acquaintanceship with him from 1949 to 1956?

A. I don't know what you mean by "very well." Could you explain what you mean?

Q. Were you fairly close friends?

A. No, I would say we were not fairly close friends.

Q. Were you thrown into rather close contact with him during that period of time?

A. No, sir.

Q. Now, assuming that it had been previously brought out during the course of this trial that Mr. Volk was one of the persons who cashed the checks here in Anchorage during this Labor Day week end——

(Testimony of Claude Kenneth Brownfield.)

Mr. Plummer: I object to the question. He can't assume any fact not in evidence and there has been no evidence whatsoever of any checks that may or may not have been cashed by Mr. Volk.

The Court: Objection sustained.

Mr. Kay: May I be heard on that?

The Court: Well, as I recall, there was no—there isn't any evidence before the Court that Mr. Volk cashed the checks here in Anchorage.

Mr. Kay: There isn't? Then the Court has evidently or maybe I have forgotten the testimony of Officer Dankworth, or whatever he was, here yesterday afternoon in regard to—

The Court: Well, if I am not mistaken, Mr. Kay, wasn't [503] that reference another problem?

Mr. Kay: No, unless I am mistaken Dankworth testified that Smith told him that Volk had passed a number of checks in town together, throughout the trip. Am I wrong or not?

Mr. Plummer: I believe that is right. He testified as to the admissions made by the defendant Smith to him on the 17th day of March and I stand in error, your Honor, but—

The Court: The Court thought that was at Fairbanks, not at Anchorage.

Mr. Kay: Oh, no, that was in Anchorage, to my recollection.

Mr. Plummer: I still object to the question. You can't put the question to this witness "assume this and assume that."

The Court: Well, but he can assume a fact in

(Testimony of Claude Kenneth Brownfield.)
evidence and it's on cross-examination. Objection overruled then. The Court apparently was in error.

Mr. Plummer: I apologize for mis-stating the evidence.

The Court: Very well. You may proceed, Mr. Gore.

Mr. Gore: Would the Court Reporter read that part of the question?

(Thereupon, the Court Reporter read question line 9, page 503.)

Q. (By Mr. Gore): Would that bring to mind any closer relationship between [504] yourself and Mr. Volk than that to which you have testified?

A. No, sir, it wouldn't.

Q. Did you have any conversation with John Volk relative to this general check passing scheme?

A. No, sir, I didn't.

Q. Did you have any conversation with Mr. Padotey relative to this check passing scheme?

A. No, sir.

Mr. Gore: May I approach the witness, your Honor?

The Court: You may.

Q. (By Mr. Gore): Mr. Brownfield, I will hand you Plaintiff's Exhibit 28, which is a motor vehicle operator's license for the Territory of Alaska, bearing serial number 21339, and ask you whether or not that was not a driver's license which was issued to Mr. Frank Padotey?

A. That driver's license was given to me by Mr. Ing and at the time it was blank, the top line.

(Testimony of Claude Kenneth Brownfield.)

Q. Mr. Brownfield, do you remember any conversation that you had with members of the Alaska Territorial Police at which time it was stated to you that that license was Mr.—was originally issued to Mr. Frank Padotey? A. No, sir.

Mr. Plummer: I object to the question; improper foundation and he must show the date, time, and persons present. [505]

The Court: Objection sustained. You may rephrase your question.

Q. (By Mr. Gore): Mr. Brownfield, when were you first arrested in connection with your part of this check passing scheme?

A. In the early part of September, 1956.

Q. Do you remember the time of day?

A. I think it was about 3:00 in the afternoon.

Q. Do you remember the place at which you were arrested?

A. I believe I was arrested on one of the streets at Fairbanks.

Q. Were you in any establishment at the time you were arrested? A. No, sir.

Q. Were you placed in jail immediately after your arrest?

A. I was taken to Territorial Police headquarters.

Q. At that time did you make any statement to the Territorial Police or any law enforcement officer relative to your name, address, and occupation?

A. At that time I refused to give my name, my address, or anything about myself.

(Testimony of Claude Kenneth Brownfield.)

The Court: Pardon me, please, Mr. Gore. Mr. Williamson, may I ask one of your officers to stand near the door, please. Thank you. I am sorry, Mr. Gore. You may now proceed.

Q. (By Mr. Gore): During the days and weeks which followed your arrest in Fairbanks, and the placing of charges against you, were you [506] interrogated on various occasions by law enforcement officers in Fairbanks?

A. I don't recall that I was.

Q. You don't recall any sessions which you had with them at which time they endeavored to question you relative to your participation in this scheme?

A. They endeavored to question me on the first day that I was arrested at the Territorial Police Headquarters.

Q. And what was your answer to them at that time?

A. I would not sign any statement and did not give any testimony.

Q. At the time were you questioned relative to the connection, if any, of James Ing with this transaction?

The Court: Pardon me, please. The courtroom is getting too crowded. The Court will have to ask all of those in the back of the room to either sit down or absent yourself from the courtroom. I am sorry, Mr. Gore. Now, you may proceed.

Mr. Gore: I have asked the question. Will the Reporter read it back.

(Testimony of Claude Kenneth Brownfield.)

(Thereupon, the Court Reporter read question line 12 above.)

A. No, sir, I was not.

Q. (By Mr. Gore): It's your statement then that you were never questioned relative to the connection of Mr. Ing with this transaction up until the present time? [507]

A. I don't recall that I was, no, sir.

Q. Do you recall a conversation which you had with Mr. Harkabus and Lt. William Trafton of the Territorial Police, when they on occasion visited you at the penitentiary, McNeil Island, Washington, to question you relative to Mr. Ing's participation in this offense, in the early part of the year 1957?

A. I do not recall that Mr. Ing's name was mentioned.

Q. Mr. Brownfield, you are presently under indictment in the Fourth Judicial Division of Alaska, Fairbanks, on several charges of——

Mr. Plummer: I object to the question. It's improper to ask him whether or not he's under indictment.

The Court: Objection sustained.

Mr. Kay: Oh, your Honor, may I be heard on that?

The Court: Yes, you may.

Mr. Kay: Well, certainly, the motive or the interest of the witness——

(Testimony of Claude Kenneth Brownfield.)

The Court: But not on this count though, this charge, is it?

Mr. Kay: Well, if he is under indictment by the United States, it's the same United States in Fairbanks as it is in Anchorage, and if he's under indictment by the United States Government at this time it's certainly proper to show it on this witness stand, your Honor. It would be highly prejudicial to deny the right to question this witness concerning any possible [508] motive he may have and that is one of the strongest motives. If he was under indictment here it certainly would be proper. It's no different, the fact that he's under indictment in Fairbanks.

The Court: But does it concern, Mr. Kay, a similar problem to this?

Mr. Kay: Well, it concerns his credibility here.

The Court: Just answer the question. I have asked you a question.

Mr. Kay: Does it concern a similar problem here?

The Court: Yes, the indictment?

Mr. Kay: Mr. Gore knows what the indictment is. No, I do not know.

The Court: Well, just say so. Thank you.

Mr. Plummer: We can possibly approach the bench and Mr. Gore can advise the Court.

The Court: Very well.

(Thereupon, all counsel approached the bench, together with the Court Reporter, and

(Testimony of Claude Kenneth Brownfield.)

the following proceedings were had out of the hearing of the jury:)

Mr. Gore: Your Honor, it's been brought to my attention that in the case which has been set on for trial next Monday in Fairbanks, that an agreement has been reached between this witness and the United States Government under which a plea of guilty will be entered to certain charges, or certain counts of that [509] pending indictment, and that a charge under which this defendant is charged as being a habitual criminal will be brought and I certainly think that we are entitled to inquire into the interest of the witness in the present case. I think I could connect that up, but, certainly, I think it's material to the cross-examination.

The Court: Well, I don't understand counsel for the defense's position. Why didn't you bring out the fact that he has been convicted of a crime? Why are you still about that? Give the Court some foundation.

Mr. Kay: Ask him then; start off with all his convictions and work up to this indictment?

The Court: Surely the Court is entitled to be informed.

Mr. Gore: I frankly see no connection between the two, one going to credibility and one going to the interest of the witness. I think they are two entirely different theories of cross-examination.

The Court: Of course, the Court is the first to concede that; on the other hand, the Court is entitled to know and for the Court's information, so

(Testimony of Claude Kenneth Brownfield.)

the Court can anticipate, I think that in conformance with good practice that would be the better way.

Mr. Gore: Yes, your Honor.

Mr. Plummer: May I suggest to counsel if he wants to elicit information as to whether or not this witness has been [510] promised anything by the United States Government, that he should ask him.

Mr. Kay: That is what we are going to do, intend to ask him.

Mr. Gore: I think it's prerequisite to making any offerings such as requested by the United States Attorney. I would have to lay the foundation by showing the charges are presently pending against him.

The Court: Not only have to, but you'd be entitled to on that basis then. Well, for the reasons stated then, I think you'd have no objection to going in conformance with standard accepted practice to determine whether or not he has ever been convicted of a crime and then proceed to the next point.

(Thereupon, all counsel, together with the Court Reporter, resumed their respective seats, and the following proceedings were had in the presence of the jury:)

Q. (By Mr. Gore): How old are you, Mr. Brownfield? A. 38.

Q. Have you ever been convicted of a crime?

A. Yes, sir, I have.

Q. Have you ever been convicted of more than

(Testimony of Claude Kenneth Brownfield.)

one crime? A. Yes, sir, I have.

Q. Would you state what those crimes were, where they were, in [511] chronological order?

A. Larceny in Champaign, Illinois, 1938; manslaughter in Charleston, Illinois, 1946; passing of forged checks in Fairbanks, Alaska, in December of 1956.

Q. And as a result of your convictions of those crimes, were you sentenced to confinement in any state penitentiary? A. Yes, sir, I was.

Q. Would you state the name of the penitentiary and the years which you spent in those penitentiaries?

Mr. Plummer: I object to the question. I don't think the witness should answer.

The Court: Objection sustained.

Q. (By Mr. Gore): Are you presently under indictment? A. Yes, sir.

Q. And where is that indictment pending?

A. Fairbanks, Alaska.

Q. What is the nature of the charges pending against you in that indictment?

A. Four counts of having a forged check in my possession and one count under the habitual criminal act of Alaska.

Q. Do you know, Mr. Brownfield, when the charges pending under that indictment have been set for trial?

A. I'm not positive. All I know is what you wrote me.

Q. Well, were you informed in that letter that

(Testimony of Claude Kenneth Brownfield.)

the cases were [512] set for trial on March 3, 1958, which is next Monday? A. Yes, sir.

Q. When were you first approached by a representative of the United States Government relative to testifying in connection with this trial?

Mr. Plummer: I object to the question; assuming a fact not in evidence.

Mr. Gore: I think the appearance on the witness stand of this defendant would certainly be a fact from which it could be assumed that this witness was approached.

The Court: Of course, that is true, but there's nothing before the Court in that respect, therefore, the Court will have to sustain the objection. You may rephrase your question, Mr. Gore.

Q. (By Mr. Gore): Mr. Brownfield, were you approached by any representative of the United States of America relative to testifying in connection with this present case? A. Yes, sir.

Q. Would you state when that was?

A. Approximately a week ago.

Q. And assuming that—today is Wednesday. Would you say that you were approached last Wednesday on the matter?

The Court: For your information, last Wednesday was the 19th day of February.

A. I'm not positive if it was Tuesday or Wednesday. [513]

Q. (By Mr. Gore): By whom were you approached? A. Deputy Marshal Chenoweth.

Q. And he is a deputy marshal from where?

(Testimony of Claude Kenneth Brownfield.)

A. Anchorage.

Q. And did he visit with you in the United States penitentiary at McNeil Island, Washington?

A. Yes, sir.

Q. Did he come there as a result of any previous contact with you?

A. No, he had not had any contact with me.

Q. Had you had any previous contact or correspondence with the United States Attorney's office either here or in Fairbanks relative to your testimony in this case?

A. I had written a letter to Mr. Yeager in Fairbanks.

Q. And did that letter contain any offer to testify on your part in exchange for any requested or recommended leniency on his part in connection with the now pending case in Fairbanks?

A. No, sir, it did not.

Q. Would you state the general content of that letter?

Mr. Plummer: I object.

Q. (Continuing): —insofar as it affects the case now on trial?

Mr. Plummer: I object. The question as stated has already been answered, and for the further objection that he [514] can't testify to the contents of the letter unless counsel shows it's not available to him after making an inquiry in attempting to do so.

The Court: Mr. Gore, I think you better lay the foundation first.

(Testimony of Claude Kenneth Brownfield.)

Q. (By Mr. Gore): Mr. Brownfield, do you have a copy of that letter?

A. Not with me, no.

Q. Did you retain a copy of it?

A. Yes, sir.

Q. And where is that copy?

A. McNeil Island.

Q. Is it available to you this afternoon for use during the course of this trial?

A. It's at McNeil Island.

Q. Then it is unavailable for use this afternoon in connection with this case?

A. It's unavailable as far as I am concerned, yes, sir.

Q. Now, would you state the content of that letter insofar as——

Mr. Plummer: I renew my objection. All counsel has done is show that the letter is unavailable. That is the first half. He does not show that he attempted to get the letter and he obviously, from his questioning, knew the letter was in existence or had some indication.

Mr. Gore: Your Honor, I consider it very ill-mannered [515] on the part of the United States Attorney to be jumping up and making objections to questions before I get a chance to finish the questions and I wish the Court would admonish him not to do so.

Mr. Plummer: If I have offended Mr. Gore, I apologize.

The Court: Counsel should wait until the ques-

(Testimony of Claude Kenneth Brownfield.)

tion is completed unless it is, of course, detrimental to the proceedings.

Mr. Plummer: And that was the reason, of course, I jumped up.

The Court: Mr. Gore, did you have any prior knowledge that that letter had been written by this witness to Fairbanks?

Mr. Gore: Only by hearsay, your Honor. I certainly did not see one. I might state to the Court that I have been informed that such letter has been written or various correspondence has been had.

The Court: Mr. Plummer, do you have the original of that letter?

Mr. Plummer: No, your Honor, I have never seen it and I don't know what it contains. Mr. Gore, of course, is purporting to act as this man's attorney at one time; he should know.

The Court: Well, objection overruled. You may answer that question.

Mr. Gore: Would the—I don't believe, your Honor, that I quite got through asking the question. Would the Reporter read that part which I had asked? [516]

(Thereupon, the Court Reporter read question line 19, page 515.)

Q. (By Mr. Gore, continuing): —insofar as it affects your testimony in the case now on trial?

A. I do not think that letter affects my testimony in any way.

Q. Did you, following the writing of that letter, receive a reply to it from Mr. Yeager?

(Testimony of Claude Kenneth Brownfield.)

A. I have never received a reply to it.

Q. Was any reply to that letter communicated to you verbally by the United States Attorney for the Western District of Washington?

A. No, sir.

Q. Have you ever been arraigned on the charges now pending against you in Fairbanks?

A. Not that I know of.

Q. Have you had any conversation with either the United States Attorney for the Western District of Washington or any of his assistants relative to that charge now pending against you in Fairbanks?

A. Who is the United States Attorney of Western Washington?

Q. I do not know his name, Mr. Brownfield. I assume that had you had such conversation you would know to whom you were speaking.

A. I'm afraid you are assuming too much. [517]

Q. Then you—do you then state that you have had no conversation with a person who represented himself to be the United States Attorney for the Western District of Washington or one of his assistants relative to the case now pending in Fairbanks?

A. I didn't quite follow you.

Mr. Gore: Would the Reporter read the question, please?

(Thereupon, the Court Reporter read the question, line 1, above.)

A. I did have a conversation with, I believe it

(Testimony of Claude Kenneth Brownfield.)

was a United States District Attorney from Tacoma.

Q. Do you recall when that conversation was, Mr. Brownfield?

A. Approximately three weeks ago.

Q. Was last Wednesday the first date upon which you have been approached by anyone to appear in this court today and give testimony in regard to this case?

A. No, it was not.

Q. When were you first approached in that regard?

A. Almost a year ago.

Q. By whom were you approached?

A. Mr. Harkabus and I do not know who the other man was.

Q. Did he represent himself to be a police officer?

A. I believe he did, yes, sir.

Q. And did he not represent himself to be Lt. William Trafton of the Territorial Police? [518]

A. I have never talked with Lt. Trafton that I remember of since I left Fairbanks.

Q. You know Lt. Trafton, do you not?

A. Yes, sir, I do.

Q. And that conversation occurred down at McNeil Island about a year ago, say, in February or March of '57?

A. Approximately there, yes.

Q. At that time, then, were you questioned relative to any connection that Mr. Ing might have had with this case?

A. I don't recall.

Q. Did you at that time give the same story to

(Testimony of Claude Kenneth Brownfield.)

the law enforcement officers or Mr. Harkabus that you gave the Court here today?

A. Mr. Harkabus did not question me on any story that I might have to say.

Q. Did the police officer who was present?

A. No, sir.

Q. Did you class that little visit as a social visit?

A. No, it was not a social visit.

Q. Was it your testimony this morning that these checks were delivered to you in Chicago, Illinois, by a person who was unknown to you?

A. Yes, sir.

Q. As a matter of fact, Mr. Brownfield, did you not procure these checks or procure the printing of these checks yourself [519] from a person with whom you had previously been confined in the penitentiary in the state of Illinois?

A. Do you want a direct answer or can I assume that you are assuming that question?

A. I would like a direct answer, Mr. Brownfield, either yes or no? A. You are mistaken.

Q. Do you recall when Mr. Padotey left the City of Chicago and came to the City of Fairbanks?

A. Approximately, yes.

Q. Would you give us the approximate date?

A. I think it was June, 1956, probably a little earlier.

Q. Did John Volk drive up the highway with you? A. I was not there when they left.

Q. You do know though that they left together?

A. I can assume that. I don't know it.

(Testimony of Claude Kenneth Brownfield.)

Q. You knew that they planned to leave together? A. No, sir.

Q. Did you later find out that they did, in fact, leave together and drive up the highway together?

A. Yes, sir, I did.

Q. Did you have any correspondence with Mr. Padotey during the period of time between his departure for Fairbanks and your departure for Fairbanks? A. I don't recall of any. [520]

Q. Do you recall any telegrams that you sent to Mr. Padotey during that period of time?

A. I believe I did, yes, sir.

Q. And did you not send him a telegram in August of 1956 in words as follows: "Paper is okay. Will arrive with the children"?

A. I don't recall that telegram.

Q. Did you state this morning on direct examination that you paid your transportation and that of Mr. Hausam and Mr. Eckley to Fairbanks?

A. Yes, sir, I did.

Q. Were you met at the airport in Fairbanks by any person? A. Yes, sir, I was.

Q. Was that John Scott and Frank Padotey?

A. Yes, sir, it was.

Q. Then you had informed Mr. Padotey of your arrival in Fairbanks? A. Yes, sir.

Q. Where did you stay after you arrived in Fairbanks?

A. At the Fairbanks Golf and Country Club.

Q. Where did Mr. Padotey stay during your residence in Fairbanks?

(Testimony of Claude Kenneth Brownfield.)

A. I believe he was living in the basement of Mr. Ing's house.

Q. You have known Mr. Padotey for a lot longer period of time than you have known Mr. Ing, have you not? [521]

A. Yes, sir.

Q. As a matter of fact, you were employed by Mr. Padotey there in the City of Chicago, Illinois, were you not?

Mr. Plummer: I object to the question. It's been asked and answered.

The Court: Well, that particular question was not asked and answered.

Mr. Plummer: I guess not.

The Court: Objection overruled. You may answer that question.

A. The only job I have had in Chicago I have been employed by Joseph Janas.

Q. (By Mr. Gore): But you know, as a matter of fact, that Mr. Janas' only connection with that business is to hold the liquor license for Mr. Padotey for the reason that Mr. Padotey cannot, under the law of the state of Illinois, have a liquor license, do you not?

A. I believe you are mistaken.

Q. Would you state that Mr. Padotey was not prohibited by reason of his criminal record from holding a liquor license in the state of Illinois?

Mr. Plummer: I object as being immaterial.

The Court: Objection sustained. It is immaterial to this issue. [522]

Q. (By Mr. Gore): Was it your testimony that Mr. Ing was in Chicago and that your conversation

(Testimony of Claude Kenneth Brownfield.)

or your meeting with him occurred in either February or March, 1956? A. Yes, sir.

Q. And should it appear here that Mr. Ing was in Hawaii during that period of time, do you suppose you might be mistaken as to the dates?

A. I believe I stated this morning at approximately that time.

Q. Well, do you recall any independent incident which might in some way make you be able or cause you to be able to more closely fix that date?

A. I can positively say that Mr. Ing had just returned from Hawaii because he had just boughten a new Cadillac and it had Hawaiian license plates on it.

Q. Can you positively state that Mr. Ing was not in Hawaii during the months of January, February, and March? A. Beg your pardon?

Q. Can you positively state that Mr. Ing was not in Hawaii during the months of January, February, and March of 1956?

A. No, I can't state that.

The Court: Mr. Gore, the Court Reporter would like to have a recess. Without objection then, the Court will go into recess for a period of 10 minutes.

(Whereupon, at 3:15 o'clock p.m. following a [523] 15-minute recess, court reconvened, and the following proceedings were had:)

The Court: Let the record show all the jurors are back and present in the box. You may continue, Mr. Gore, with your cross-examination.

(Testimony of Claude Kenneth Brownfield.)

Q. (By Mr. Gore): As a matter of fact, Mr. Padotey, weren't the men who—or, the man who printed up these——

A. I am Mr. Brownfield.

Q. Beg your pardon. A. Thank you.

Q. Weren't the men or wasn't the man who printed up these checks from Alton?

A. No, sir.

The Court: I am sorry. Is that a city, counsel?

Mr. Gore: Pardon, your Honor?

The Court: Is that a city?

Mr. Gore: Yes, Alton, Illinois.

The Court: Thank you.

Mr. Gore: Your Honor, before I proceed in my next line of examination, I perhaps better approach the bench with the United States Attorney.

The Court: Very well, you may do so. Do other counsel desire to come——

(Thereupon, all counsel approached the bench, [524] together with the Court Reporter, and the following proceedings were had out of the hearing of the jury:)

Mr. Gore: The Court has previously ruled that I could not, at that time, question this defendant or this witness relative to his acquaintanceship and the nature of his acquaintanceship with a Mr. Padotey. I believe at this time, your Honor, that I would be entitled to go into a line of questioning which would develop that this witness became acquainted with Mr. Padotey at the time when they were both in-

(Testimony of Claude Kenneth Brownfield.)

mates of the state penitentiary in the state of Illinois and that he also at that time became acquainted with the mysterious person, Volk, about who certain statements have been made in connection with the offense.

The Court: What has developed, counsel, that would indicate that you'd be justified under the law?

Mr. Gore: The witness has testified, your Honor, relative to his—how he first became acquainted with Mr. Ing and that he was introduced to Mr. Ing by the person, Padotey, in a bar in the City of Illinois and that he has also from that date continued the acquaintanceship and he has placed Mr. Padotey in the City of Fairbanks and he has had Mr. Padotey meet him at the airport and he has testified that he lived at the Country Club at which Mr. Padotey was either employed or which he was a partner, and I believe that we should be able to develop by cross-examination from this witness the more close relationship between this [525] witness and Mr. Padotey than his relationship with Mr. Ing, and from that the jury should be able to infer that it would have been more likely that this deal or this transaction to which Mr. Brownfield has testified, originated in the mind of Mr. Padotey rather than in the mind of Mr. Ing, as testified to by this witness.

The Court: The difference between Mr. Padotey and Mr. Ing is that Mr. Padotey is not under indictment and on trial; Mr. Ing is.

Mr. Gore: That certainly is no fault of ours, your Honor.

(Testimony of Claude Kenneth Brownfield.)

The Court: That is true. On the other hand, you are at liberty to call this witness.

Mr. Gore: Well, may we then make a showing, your Honor, that we have endeavored to obtain his presence here in the City of Fairbanks—or, in the City of Anchorage to give testimony in this case and that he is unavailable and that—also that the United States Attorney has made effort to secure his presence to appear in the City of Anchorage and that the United States Attorney failed in his effort to secure his presence here in the City of Anchorage.

The Court: Of course, that fact would be proper. You misunderstood me. I meant you could call Mr. Brownfield as your witness and elicit that testimony if you want to.

Mr. Kay: I certainly feel it would be proper cross-examination. I think we are unduly limited on the scope of cross-examination if we can't go fully into the relationship of this man Padotey.

Mr. Plummer: I think there has been no additional showing made since the time of your Honor's prior ruling and I don't think the issues in the case relate at all; was immaterial then and there's been no testimony introduced then and now.

Mr. Kay: The original objection of the United States Attorney to question this man concerning his acquaintanceship with Padotey in the penitentiary is based on the fact it might tend to humiliate or embarrass this man, improper because it had not yet been brought out that he had been convicted of a

(Testimony of Claude Kenneth Brownfield.)

crime. We have now brought that out. He has admitted being in the penitentiary. There is no embarrassment or humiliation additional that could be caused by merely asking him if the acquaintanceship with Padotey was not in the penitentiary.

Mr. Plummer: But, your Honor, his acquaintanceship with Mr. Padotey, whatever it may be, is not an issue in this case.

Mr. Kay: It most definitely is.

Mr. Plummer: Not an issue in this case.

The Court: Do you wish to be heard?

Mr. Nesbitt: I still feel that with six named defendants, at least two or three named in each count, the scope of the cross-examination is being limited by not allowing them [527] to go into the Padotey aspect in full. In fact, it may bring out that Padotey is responsible for the crime or ringleader of it. Whether he's a defendant or not, that doesn't matter—and have a right to show it.

The Court: Well, of course, if you did not have a witness—or, this witness available to bring that fact out on your defense, then I'd agree with you, but that is not the case. The witness is here and you can call him under the rule. Objection sustained.

Mr. Gore: Your Honor, may we then at this time take the witness off of the witness stand temporarily for making a showing that we have attempted to obtain the presence of the witness Padotey and that we have been unable to do so and may we introduce in evidence a wire from Mr. Padotey in which he

(Testimony of Claude Kenneth Brownfield.)

flatly refuses to come to the City of Anchorage to give testimony regarding this case?

The Court: I have no objection myself. What position does the Government have?

Mr. Plummer: As I understand it, Mr. Padotey is a relative of the defendant Ing.

Mr. Kay: Relative?

Mr. Plummer: Isn't he?

Mr. Kay: No.

Mr. Plummer: At least he's a business partner.

Mr. Kay: Former business partner. [528]

The Court: What is your position now, as to the defense making a showing that they have tried to get Padotey and can't get him?

Mr. Plummer: I will say this, your Honor: That they may not be able to get him starting this afternoon, but I cannot conceive why he would not have to respond to a criminal subpoena issued by this Court.

Mr. Gore: Your Honor, he didn't respond to one which was issued by the United States Attorney's office.

The Court: Well——

Mr. Gore: And I think the United States Attorney——

Mr. Plummer: I don't know that they actually had—whether one's been issued and served on him.

The Court: But there is only one thing before the Court, that is, do you have any objection to the defense making a showing at this time that they can't get Padotey?

(Testimony of Claude Kenneth Brownfield.)

Mr. Plummer: May I have just a minute?

The Court: Yes, you may.

Mr. Plummer: At this time I think I do have these: This is a material witness to their case and if they can't have him here when they put on their case, to show the Court that they have made due and diligent effort to get him here and weren't able to do that and do whatever—at that time if they are still unable to get him and they convince the Court that they have used every means available, they could then call this witness as [529] their witness and elicit the testimony that they are now attempting to elicit from him on cross-examination.

The Court: I will have to sustain the objection under the facts because this is the Government's case now. It would be improper to interrupt them.

(Thereupon, all counsel and the Court Reporter resumed their respective seats, and the following proceedings were had in the presence of the jury:)

Q. (By Mr. Gore): Mr. Brownfield, do you have the general reputation in and around the City of Chicago for being a thief?

Mr. Plummer: Objection, highly improper.

The Court: Objection sustained.

Mr. Gore: Your Honor, I would like to be heard on that.

The Court: I will hear you, Mr. Gore.

Mr. Gore: I seek to elicit from this witness just why a person like the defendant Ing would approach Mr. Brownfield in a bar in the City of

(Testimony of Claude Kenneth Brownfield.)

Chicago, not being previously acquainted, and make any such offer as to which Mr. Brownfield has testified.

Mr. Plummer: I suggest, Mr. Gore, that he elicit that information from Mr. Ing; perhaps he has the answer. He should not ask this witness an improper question and that is one.

Mr. Kay: That is a proper question under the Alaskan statute. [530]

Mr. Plummer: He can't testify as to his own reputation.

Mr. Kay: He can if he knows it. The general reputation of a witness is always proper under the Alaska statute.

The Court: That's true, but not from the witness himself. Objection sustained. Reputation isn't what he says about himself; it's what other people say about him.

Q. (By Mr. Gore): Mr. Brownfield, how long had you been talking to Mr. Ing before he approached you with this check proposition to which you have testified? A. Approximately a week.

Q. You seen him on regular occasions during that period of time?

A. What is your definition of regular?

Q. Did you see him every day?

A. No, sir.

Q. Did you see him every other day?

A. Approximately.

Q. How many hours do you suppose that you had been engaged in conversation with Mr. Ing

(Testimony of Claude Kenneth Brownfield.)

before he approached you with this proposition of engaging in a check venture with him in Fairbanks and Anchorage?

A. I have no idea, but probably not very many.

Q. Do you suppose that he was acquainted with the fact that you had last—previously done time in the penitentiary?

A. I believe he done time in the same penitentiary I was in at [531] the same time.

Q. Was he there when you and Frank Padotey was there? A. Not that I know of.

Q. Or when you and John Volk were there?

A. Not that I know of.

Q. Well, you and John Volk and Frank Padotey were all there at the same time, were you not?

Mr. Plummer: I object to further questions along this line.

Mr. Gore: I believe the witness brought it out himself.

The Court: Objection overruled this time.

Q. (By Mr. Gore): Would you answer the question, please, Mr. Brownfield?

A. You will have to ask it again.

Mr. Gore: Would you read it back?

(Thereupon, the Court Reporter read Question, Line 6, above.)

A. At approximately the same time.

Q. And you and Frank Padotey were cellmates, were you not?

A. You have some wrong information.

(Testimony of Claude Kenneth Brownfield.)

Mr. Kay: That's not an answer. It's a question, your Honor.

The Court: Wait a minute, one counsel at a time and Mr. Gore is questioning. You don't have the right——

Mr. Kay: I was just asking the court to—advise the court that that was not an answer. [532]

The Court: But, counsel, you haven't the right to object. You are not counsel under examination. One counsel at a time under the rules. You may proceed, Mr. Gore; nothing before the court.

Q. (By Mr. Gore): Rephrase the question then. Is there where you first became acquainted with Frank Padotey and John Volk? A. Yes, sir.

Q. And is that where you first became acquainted with the person who did the printing job for you?

A. I believe I have answered that question before.

Q. Where were you when Mr. Ing first proposed to you that you become associated with him in this check scheme?

A. Tavern at 4700 South Wentworth.

Q. What was the occasion for that meeting?

A. I believe we were just drinking.

Q. Can you state how many previous occasions that you had conversations with Mr. Ing?

A. No, sir, I can't.

Q. Was Frank Padotey with you on the majority of those occasions?

A. I don't recall him being with me.

(Testimony of Claude Kenneth Brownfield.)

Q. When he made the proposition to you did you immediately accept the offer?

A. No, sir. [533]

Q. How long did you think it over before you accepted that offer?

A. Probably two months.

Q. Did you not testify this morning on direct examination that when he suggested it that you agreed to participate in it?

A. I was under the impression that I testified I would give it some thought and he later contacted me and I agreed.

Q. And how did he contact you?

A. By letter.

Q. And, of course, you do not have that letter?

A. No, sir, I don't.

Q. Do you have anything in writing which would in any way implicate Mr. Ing in this, other than your own testimony here given from the witness stand?

A. No, sir, I don't.

Q. Now, in response to a previous question of mine, you made mention of the fact that you had a conversation with the United States Attorney or one of his assistants in the City of Tacoma, Washington. Would you, as best you can, fix the date of that conversation?

A. The conversation was at McNeil Island, but I believe it was about the first of February.

Q. Who was present at that conversation?

(Testimony of Claude Kenneth Brownfield.)

A. Another gentleman was present, but I didn't know his name.

Q. What was the name of the person with whom you talked? [534]

A. Mr. Baumhauser, something of that sort.

Q. And what was his official capacity, if you know?

A. He was connected with the District Attorney's office at Tacoma.

Q. Do you know the nature of that connection?

A. I think he is one of the assistants.

Q. What was the occasion for that visit?

A. He asked me if I had ever thought of using Rule 20 in regard to the detainer which was against me.

Q. Was that a voluntary visit on his part or was that in response to a request by you that he visit you?

A. I think it was a voluntary visit on his part, as far as I know.

Q. Do you have reason to think that the office of the United States Attorney for the Western District of Washington, Tacoma Division, would have knowledge of the pendency of charges against you other than any information that you conveyed to them about it?

Mr. Plummer: I object to the question. He can't possibly be asked about the knowledge that the United States Attorney's office down in Tacoma had. How would he have any knowledge?

Mr. Gore: I will rephrase the question.

(Testimony of Claude Kenneth Brownfield.)

The Court: Very well, you may proceed. Nothing before the Court. [535]

Q. (By Mr. Gore): Did the person with whom you discussed this matter indicate or give you reason to believe that he was making this visit to you in response to a request by the law enforcement officers or the District Attorney's offices in the Territory of Alaska?

A. No, sir, he never explained why he was asking me if I had ever thought of Rule 20.

Q. Did he explain to you what Rule 20 is?

A. He asked me if I was familiar with it.

Q. And you stated that you were?

A. I told him that I thought I was.

Q. And was it his intention at that time to suggest to you that—I will rephrase the question. Did he advise you at that time that you could enter a plea under Rule 20? A. No, sir, he didn't.

Q. Well, will you state to the best of your recollection the conversation that you had with the gentleman at that time?

A. He informed me that he did not know if it was possible since it was a Territorial charge I was indicted under, if it could be under Rule 20, and I was of the impression that it was something of a sort of a test case to see if it could be done.

Q. Did he inform you whether or not he had had any correspondence with the authorities in Alaska relative to your case? [536]

A. He did not.

Q. Did you gather from his conversation that he

(Testimony of Claude Kenneth Brownfield.)

just wanted to pick your case up and make a test case out of it?

A. I never informed an opinion.

Q. Well, would you say that this was just another social visit?

Mr. Plummer: Objection. The question has been asked and answered.

The Court: Objection sustained. It's repetitious.

Mr. Kay: Not as to this visit.

The Court: Pardon me, Mr. Kay, you will have your turn in due course.

Q. (By Mr. Gore): Mr. Brownfield, have you discussed the testimony that you are to give, or that you have given in this case with anyone in relation to any sentence that might be imposed upon you in connection with the now standing charges in the Fourth Division?

A. No, sir, I haven't.

Q. Have you been informed by anyone in connection with this case that the fact that—or, of the fact that a conviction on the habitual criminal act could result in a sentence of life imprisonment?

A. I believe you informed me of that.

Q. Has any law enforcement officer mentioned that to you in connection with any recommendation that might be made in your [537] regard?

A. No, sir.

Q. Mr. Brownfield, after consistently for a period of more than a year and a half of refusing to answer any questions relative to this case, why is it that you, within 10 or 15 days of the date that you

(Testimony of Claude Kenneth Brownfield.)

again go to trial, and on the first day or the day that this case starts trial, why is it that you have suddenly decided to make statements relative to the check passing scheme?

A. I believe I have been persuaded by my wife.

Q. And would that have anything to do with your hope or with any promise that you might receive leniency in connection with the case pending in Fairbanks?

A. I have not discussed that with anybody.

Q. As a matter of fact, Mr. Brownfield, while you were in jail in Fairbanks, were you not made an offer of a suspended sentence if you would give testimony that would tend to connect James Ing with the commission of this offense?

Mr. Plummer: I object to the question unless he gives the time and place and in connection with what offense.

The Court: Objection sustained for the reasons stated.

Q. (By Mr. Gore): And, as a matter of fact, Mr. Brownfield, after your conviction on your plea of guilty in Fairbanks, did you not receive an offer of a recommended pardon if you would give [538] testimony tending to connect James Ing with the commission of this offense?

Mr. Plummer: I object on the same basis. In addition to that he has not shown who the pardon was supposed to be from or whether the person, if in fact he did, could get a pardon.

(Testimony of Claude Kenneth Brownfield.)

Mr. Gore: Your Honor, I believe it's proper cross-examination.

The Court: Upon the condition you lay the proper foundation. For the reason that you haven't laid the proper foundation, the objection is sustained; time, place, persons present.

Q. (By Mr. Gore): Mr. Brownfield, do you recall a conversation which you had with me in the Federal jail in Fairbanks, Alaska, in December, 1956, relative to offers which were made to you relative to giving testimony against James Ing?

A. Not in regard to myself, no.

Q. You have testified that it is on account of Mrs. Brownfield that you decided to appear here today and give testimony in this case. What about—or, what between you and Mrs. Brownfield would influence you to give such testimony?

Mr. Plummer: Object to the question. It's improper and clearly outside the scope of the direct examination, and, certainly, his feelings toward Mrs. Brownfield is never, was never any issue in this case.

Mr. Gore: Your Honor, I think I am entitled to go [539] into the interest of this witness and the outcome of any criminal prosecution.

The Court: Objection overruled. He may answer that question.

Q. (By Mr. Gore): Is it her hope, Mr. Brownfield—

The Court: Pardon me. You have asked one question. Objection overruled. Let him answer the question.

(Testimony of Claude Kenneth Brownfield.)

Q. (By Mr. Gore): Would you answer the question, please, Mr. Brownfield?

A. I never caught the full question. Would you please have it repeated?

The Court: Would you please read it back then.

(Thereupon, the Court Reporter read Question Line 17, Page 539.)

A. I am not certain, but I believe my feelings between Mrs. Brownfield and myself are my personal business and not of any interest to you or the Court. If I am wrong, I am sorry.

Q. (By Mr. Gore): I believe you are quite right, Mr. Brownfield. The question did not—did—I did not express in the question my intent at the time. During the course of your being influenced in this matter by Mrs. Brownfield, was it her desire that you give this testimony in hopes that you would [540] receive leniency?

A. I don't believe we have ever exactly discussed the matter that way in our letters.

Q. And what is your hope in the matter?

A. My future is rather uncertain. I actually have no hopes for the future.

Q. And you have made no agreements relative to the dismissal of one or more charges now pending against you in exchange for your testimony here today?

A. I have made no agreements.

Q. Have you had any discussion with any person or persons as to whether or not the case now

(Testimony of Claude Kenneth Brownfield.)

pending against you in Fairbanks will be brought on for trial on next Monday morning?

A. No, sir, I have not discussed it with anyone.

Q. Mr. Brownfield, you are aware that an order was entered in the District Court in Fairbanks requiring the United States Government to produce you in Fairbanks on the 15th day of February, 1958, for arraignment on those charges, are you not?

A. You informed me of that.

Q. And have you had any discussion with any person or persons which would lead you to believe or which would cause you to believe that there have been any changes in plans?

A. No, sir.

Q. Then so far as you are now informed, the case set for trial in Fairbanks next Monday morning will proceed as scheduled? [541]

A. Yes, sir.

Q. And you have made no deals with anybody relative to that case?

A. No, sir.

Q. And you have had no discussion with any proper officials relative to your entering a plea to the charges now pending against you?

A. No, sir.

Mr. Gore: Would the Court indulge me just a moment.

The Court: Very well.

Mr. Gore: Your Honor, I believe that I am about through with this witness and I wonder if I could have about a 5-minute recess to go through my notes taken on direct examination to make a

(Testimony of Claude Kenneth Brownfield.)

determination of whether or not I have any further questions.

The Court: I have no objection; do counsel?

Mr. Kay: No. Fine, your Honor.

The Court: Court will go into recess for a period of 10 minutes at this time and then we won't have to go into another recess.

(Whereupon, at 4:00 o'clock p.m., following a 10-minute recess, court reconvened and the following proceedings were had:)

The Court: Let the record show all the jurors are back and present in the box. You may continue, Mr. Gore. [542]

Mr. Gore: Thank you, your Honor.

Q. (By Mr. Gore): Mr. Brownfield, you testified that you had a conversation with a Deputy United States Marshal approximately a week ago. Where did that conversation take place?

A. McNeil Island.

Q. And would you again state his name?

A. James Chenoweth.

Q. Who was present at the time that conversation took place?

A. Mr. Harkabus and myself.

Q. Did Mr. Harkabus represent himself to you as a law enforcement officer?

A. Not that I know of.

Q. Did he give you any indication of his interest in this matter?

A. No, sir.

(Testimony of Claude Kenneth Brownfield.)

Q. How long have you been acquainted with Mr. Harkabus?

A. I am not acquainted with him.

Q. Did you know this deputy marshal?

A. No, sir.

Q. What time of day did that conversation take place?

A. About 2:00 in the afternoon, I think.

Q. Where did it take place?

A. I believe it was in the Island visiting room.

Q. That conversation related to your appearance here in Anchorage [543] in giving testimony in this case?

A. Yes, sir.

Q. Will you state that conversation to the best of your recollection?

A. I don't recall just which one it was, but I believe it was Mr. Chenoweth said that he felt in his investigation that I had knowledge that would help clear this matter up and he asked me if I would be willing to testify if I was returned to Fairbanks. I said that I would testify as to what I knew, but would not testify as to what I thought or what I surmised, or what I assume, and he said then that he would return me to Anchorage.

Q. And that sudden change of mind on your part was caused by communications which were had between your wife and yourself and not by any hope for reward for the giving of testimony?

Mr. Plummer: I object to the question. It's been asked and answered.

(Testimony of Claude Kenneth Brownfield.)

The Court: Objection overruled. He may answer this question.

A. It was not a sudden change of mind.

Q. Did they at that time hold out any hope of a reward to you? A. No, sir.

Q. Did they at that time advise you that any statements which you made in connection with this case might also be used against you? [544]

A. Very definitely, they did.

Q. And had that change of mind occurred on or before the early part of December of 1957?

A. Beg your pardon there? I couldn't just understand your date.

Q. I believe you testified that it wasn't a sudden change of mind and I asked you whether or not that change of mind had occurred on or before December, the early part of December, 1957?

A. I don't recall.

Q. Did that change of mind have anything to do with your failure to respond to various letters which I, myself, have directed to you relative to the matter now pending in Fairbanks, since the first of December, 1957?

A. Your letters? Something has been wrong. I have never received any from you for almost three or four months.

Q. You have received no correspondence from me for three or four months?

A. That's right.

Q. Well, Mr. Brownfield, have you directed any communication to me relative to our—to the now

(Testimony of Claude Kenneth Brownfield.)

pending case in Fairbanks since the first of December in 1957?

A. At least three letters.

Q. When did you leave McNeil Island, Washington, returning to the City of Anchorage?

A. Today is Wednesday, isn't it? [545]

Q. That is correct.

A. A week ago today, 3:20 in the afternoon.

Q. When did you arrive in the City of Anchorage?

A. Last Thursday at approximately noon.

Q. And where were you taken upon your arrival in Anchorage?

A. I believe the Marshal's office.

Q. Have you been confined in the Federal jail since your arrival in Anchorage? A. No, sir.

Q. And where have you been held since you have been here?

A. I have been in the custody of Marshal Chenoweth.

Q. Then you have been confined at some place other than the Federal jail?

A. I have been confined at the Marshal's office in a small cell that is there.

Q. Now, on this charge or these charges which are now pending in Fairbanks, is it your intention to stand trial on those charges on next Monday morning?

Mr. Plummer: I object. The question has already been asked and answered.

(Testimony of Claude Kenneth Brownfield.)

The Court: Objection sustained, having been once asked and answered, counsel.

Mr. Gore: I was only laying a foundation for additional questions, your Honor, relative to statements which were made by Mr. Brownfield in the presence of the Court this morning. [546]

The Court: Well, even though that was your intent, the fact that they had been stated before would be sufficient to lay the foundation once for all subsequent questions; on that point, of course.

Mr. Gore: Yes.

Q. (By Mr. Gore): Did you not this morning, Mr. Brownfield, in a conference at the Judge's bench, formally release me from any further responsibility or liability in connection with your defense on those charges now pending in the City of Fairbanks? A. Yes, sir, I did.

Q. Have you made arrangements for other counsel to defend you in that proceeding?

A. No, sir, I haven't.

Q. Is it your intention to go to Fairbanks then and enter a plea of guilty to those charges?

A. Yes, sir, it is.

Q. Including the charge of a habitual criminal?

A. Yes, sir.

Q. And you know, of course, that that carries a mandatory life sentence under the laws of the Territory of Alaska?

Mr. Plummer: Object. It's already been asked and answered.

The Court: Objection sustained.

(Testimony of Claude Kenneth Brownfield.)

Mr. Gore: I have no further questions. [547]

The Court: Do other counsel have any cross-examination? Mr. Nesbett?

Mr. Nesbett: Defendant Smith has no cross-examination.

The Court: Thank you. Mr. Hepp?

Mr. Hepp: I have none, your Honor.

The Court: Mr. Kay?

Mr. Kay: I have no—I was under the belief, your Honor—we have been operating under the belief that only one of the counsel for Mr. Ing could cross-examine Mr.——

The Court: Yes, but the Court would be understanding in that respect.

Mr. Kay: Well, could I confer then just a moment, your Honor, because I have been under the impression that only one——

The Court: Well, that is the rule, but the Court is always willing to relax the rule in order to get justice.

CLAUDE KENNETH BROWNFIELD
testifies as follows on

Cross-Examination

By Mr. Kay:

Q. Mr. Brownfield, I believe you testified concerning the conversation with an assistant United States Attorney from Tacoma in February of this year, did you not? [548]

A. Yes, sir.

(Testimony of Claude Kenneth Brownfield.)

Q. I believe Mr. Gore asked you if you would relate that conversation, and was not your reply that the District Attorney from Tacoma came over there to ask you about any interest you might have in a plea under Rule 20?

A. Yes, sir.

Q. Was that all the conversation that took place between you and that Assistant United States Attorney, Mr. Brownfield, on that occasion?

A. No, sir.

Q. Will you relate the rest of the conversation?

A. He informed me that he was at McNeil in regard to two or three other cases and that he did not explain why he talked with me or gave me no inkling as to why he talked with me other than the fact that he informed me that it was—he thought it was possible I could use Rule 20 and asked me if I had ever considered it and I said I had and he also informed me at that time that he could make no decision in the matter, that it was up to the Alaskan courts. I believe he—I don't believe he said "Alaskan courts," I believe he said Fairbanks court.

Q. Did he say Fairbanks court or Fairbanks United States Attorney's office?

A. Well, I believe he said "court." I am not sure.

Q. In any event, it was the branch of the law enforcement in the Territory of Alaska, located in the City of Fairbanks? [549]

A. Yes, sir.

Q. Now, and that is all the conversation was?

A. Well, there was nothing else other than the

(Testimony of Claude Kenneth Brownfield.)

fact that he informed me that he was of the opinion that each of the first four counts carried a maximum of 20 years and the last count carried a maximum of life.

Q. Well, then, you were well aware that the conviction of this habitual criminal act would carry a life sentence or could carry a life sentence?

A. Yes.

Q. Now, in discussing this question of a possible plea under Rule 20, didn't he discuss with you the possible sentence which you might receive if you did decide to enter a plea under Rule 20 other than just merely telling you what the maximum was?

A. No. He made it very clear to me that his office had nothing to do in the matter other than accept the recommendation from Fairbanks.

Q. I see. Well, did he give you any indication of the attitude of Fairbanks in making a recommendation of a sentence under Rule 20?

A. No, sir, he did not and that's—I never did understand exactly why he talked with me.

Q. Well, did he leave the impression that if you entered a plea under Rule 20 down there that the recommendation at Fairbanks [550] would be the maximum on each of the four counts or five counts, including the habitual criminal count?

A. He never even went into the phase of that thing.

Q. Well, I take it that this conversation didn't come to anything; at least, you didn't decide to avail yourself of Rule 20?

(Testimony of Claude Kenneth Brownfield.)

A. No, sir, that conversation came to absolutely nothing, you might say.

Q. Did you hear anything further from him?

A. Not a word.

Q. Or anything from the authorities in Fairbanks with reference to the use of Rule 20 in availing yourself of it in Tacoma?

A. No, sir, I never heard a word.

Q. Then until Mr. Harkabus and Mr. Chenoweth came down to see you a week ago, you had had no further contact with the Alaska law enforcement authorities concerning this?

A. No, sir, their visit was a total surprise.

Q. And you have testified that it's your intention to go to Fairbanks——

The Court: Pardon me.

Mr. Kay: Pardon me.

The Court: We won't go over that again, Mr. Kay.

Q. (By Mr. Kay): Mr. Brownfield, let me ask you this: Isn't it a fact that [551] you have been assured by someone in connection with the law enforcement authorities, and I frankly don't know whom, but isn't it a fact that you have been assured by someone purporting to act as a representative or from the Fairbanks United States Attorney's office, that if you testify in this case, and if you enter a plea to the first four counts of the indictment pending against you in Fairbanks, Alaska, that you will receive either a suspended sentence or a light concurrent sentence on those four counts in

(Testimony of Claude Kenneth Brownfield.)

Fairbanks and that the count against you as a habitual criminal will be dismissed?

A. No, sir, no one has ever told me that.

Q. Have they ever given you a hint to that effect? A. No, sir.

Q. Isn't that the bargain which you offered to make with the office—with the representative of the United States Attorney's office in Tacoma when they came to see you at McNeil Island?

A. No, sir, it isn't.

Q. It is not a fact that you offered to make such a bargain, plead guilty to the first four counts if they—— A. No, sir.

Mr. Plummer: I object to counsel arguing.

Mr. Kay: I am not arguing.

The Court: Well, Mr. Kay, I think this last question [552] has been asked once before and covered.

Q. (By Mr. Kay): Let me ask this final question. Is it not your hope that you plead to the first four counts of the indictment against you and that upon your plea they will dismiss the habitual criminal act against you?

A. A person may have many kinds of hopes.

Q. And that is yours, is it not?

A. Not necessarily, no.

Q. Not necessarily. Thank you.

The Court: Any redirect, Mr. Plummer?

Mr. Plummer: No, your Honor.

The Court: Very well. You may step down. May this witness be excused?

Mr. Plummer: As far as the Government is concerned he may be.

The Court: Very well.

(Thereupon, the witness was excused and left the stand.)

The Court: You may call your next witness.

Mr. Plummer: I'd like to call Mr. Yokely. He's down the hall, I think.

ERNEST YOKELY

called as a witness for and on behalf of the Government, and being first duly sworn, testifies as follows on [553]

Direct Examination

By Mr. Plummer:

Q. Will you please state your name, sir?

A. Ernest Yokely.

Q. Where do you live, Mr. Yokely?

A. 1806 East I.

Q. That is in Anchorage? A. Yes.

Q. And were you in the Anchorage area during the Labor Day week end of 1956? A. Yes.

Q. And did you have occasion at that time to visit the home of Eli Williams?

A. I don't know whether that was the correct day or not.

Q. Well, let me ask you this question, sir: Do you remember the shooting out at Ford's Cafe when Ben Wroe got killed and the Crawford—Mr. Crawford, or, one of the Crawfords got shot?

A. I heard of it.

(Testimony of Ernest Yokely.)

Q. Does that help fix it in your mind? Was it that week end?

Mr. Hepp: I object to counsel's suggesting to this witness the date that he desires him to testify to.

The Court: Well, the witness apparently doesn't have an independent recollection of that particular time, therefore, under the circumstances, certain leading questions are permitted. [554] I don't know whether or not this has gone too far. Would you read it back, please.

(Thereupon, the Court Reporter read back Line 15 through Line 20, Page 554.)

The Court: Objection overruled. You may proceed.

Q. (By Mr. Plummer): Would you answer the question, sir?

A. Would you ask it again?

Mr. Plummer: Would you read the question?

The Court: Didn't you just hear it now, Mr. Yokely? Did you not hear her read it to you now?

A. No, I didn't.

The Court: Very well, will you read it back, please.

(Thereupon, the Court Reporter read back the question on Line 20, Page 554.)

A. I don't know.

Q. (By Mr. Plummer): Sir, would you tell me when you were at the Eli Williams' residence if anybody else was there?

(Testimony of Ernest Yokely.)

Mr. Hepp: Now, I object to that unless the time and place is fixed here. He hasn't even testified that he was out at the residence as I recall. I think counsel testified to that and asked him if perhaps that wasn't on a given week end.

The Court: Mr. Plummer, you will have to lay the proper foundation and that is, ask him whether or not he's ever [555] been there, as Mr. Hepp points out to you.

Q. (By Mr. Plummer): Have you ever been at the home of Eli Williams? A. Yes, I have.

Q. And were you there sometime around the Labor Day week end of 1956?

A. I think so.

Q. All right, and do you remember about the time of the day it was, sir? A. No, I don't.

Q. Do you remember whether it was in the afternoon or the evening?

A. I think it was in the afternoon.

Q. And do you recall who—what you did there on that occasion?

Mr. Hepp: I object. I don't think this "occasion" has been established. He doesn't even remember when he was there.

Mr. Plummer: The record—

Mr. Hepp: At least I am very definite in my mind as to his answers. He doesn't remember it. He says it "may have been" around the week end.

Mr. Plummer: If that is the best he can do—

Mr. Hepp: Well, if it's not material established—

(Testimony of Ernest Yokely.)

Mr. Plummer: I think they are, or Mr. Yokely wouldn't be in the courtroom.

The Court: Well—— [556]

Mr. Hepp: I believe this is quite important, your Honor, as to when the date was.

The Court: Of course, I appreciate that counsel. Mr. Plummer, you should seek to try to focus it more clearly, if you can, as to the date in question.

Q. (By Mr. Plummer): Do you remember the week end when Ben Wroe got shot?

Mr. Hepp: I object to that.

The Court: Objection overruled. Now, you can't have your cake and eat it, too, counsel. You objected to him asking the question because he hasn't laid a foundation. Now, you object to it when he tries to lay it.

Mr. Hepp: My objection was this has already been answered. Counsel asked him and he answered it.

Mr. Plummer: Then do you withdraw your objection as to no foundation?

Mr. Hepp: I don't recall having made the foundation objection.

Mr. Plummer: I'm sorry.

The Court: Well, as I recall, there was objection because of—foundation hadn't been properly laid.

Mr. Kay: Well, the witness' answer was he didn't know.

The Court: Now, Mr. Kay, you are not in this, please. You will have your turn. Mr. Kay has an

(Testimony of Ernest Yokely.)

irresistible impulse. [557] That is the best definition of "irresistible impulse" I have ever seen.

Mr. Kay: I plead guilty.

The Court: That is said in good faith, Mr. Kay.

Mr. Kay: Yes, indeed.

The Court: Pardon me, let's get back now to the record. If Mr. Hepp has objected to the question as having been asked and answered, then the objection will be sustained.

Mr. Plummer: May I state the Government's position and that is as to the foundation and so on like that? Your Honor, the witness can only do the best placement that he can as regards the time.

The Court: Well, counsel, would you mind making one more attempt to see if you can fix in focus more clearly.

Mr. Plummer: Yes, sir; may I have just a minute, your Honor?

The Court: You may. (Slight pause.)

Q. (By Mr. Plummer): Mr. Yokely, do you recall the conversation out in this hallway within the last hour with a Mr. Dankworth and an Officer Barkley from the Territorial police?

Mr. Hepp: Just a moment before you answer. I certainly object to that as no relationship to the issues here—what somebody may have told him. It obviously calls for hearsay. I know that this is a premature objection but I am certain that [558] the violent question is what was that conversation, or, did it suggest anything to this witness and we

(Testimony of Ernest Yokely.)

believe that he should testify as to his own independent recollection or not at all.

The Court: Well, there again, though, counsel, that isn't the law. I am sure you will bear with the Court when I state that if a witness cannot answer specifically a particular question asked that counsel, whether it was you or the Government, has a right to suggest a time and/or ask a leading question within reason, and that same consideration would be accorded you as it is the Government.

Mr. Hepp: I submit that counsel has already asked that leading question and that is: Was he out there on the Labor Day week end. Nothing could be more leading than that and this witness stated he didn't know and I don't know how it could be established the fact that he does know now when he didn't know in response to a direct leading question. I don't mean to argue with the Court. I was merely raising a point.

The Court: Yes, but the fact that this witness cannot answer a leading question doesn't mean that the counsel asking the leading question, if permitted under the rules, could not ask another leading question.

Mr. Hepp: Well, I am afraid I'd have to lodge an objection to the Court's ruling on leading questions.

The Court: You may do so. The record may reflect the fact that Mr. Hepp objects to the Court's overruling his objection [559] on the question of leading questions; therefore, you may proceed.

(Testimony of Ernest Yokely.)

Q. (By Mr. Plummer): Would you answer the question, sir?

Mr. Hepp: May I have that question read again? I don't even remember it now.

The Court: Well, Mr. Plummer, would you please reask the question?

Mr. Plummer: Yes, sir.

Q. (By Mr. Plummer): Did you, sir, within the last hour have a conversation with an Officer Barkley and an Officer Dankworth, one gentleman being dressed in a plaid shirt and one gentleman being dressed in a brown suit, in the Federal Building here?

A. They talked to me over in the jail.

Q. Did you have a conversation with them over in the jail? A. Yes, sir.

Q. And would you be good enough to tell us what your conversation was about?

Mr. Hepp: Now, I object to that.

The Court: Objection sustained.

Q. (By Mr. Plummer): Were you at the home of Eli Williams on or about Labor Day of 1956?

Mr. Hepp: I object to that. He has asked the question. This witness answered and said he didn't know. [560]

The Court: Objection sustained, as it's repetitious, Mr. Plummer. That does not preclude you, though, from asking another question.

Mr. Plummer: Let me ask the witness this question:

Q. (By Mr. Plummer): Has he ever been—

(Testimony of Ernest Yokely.)

Mr. Yokely, have you ever been at the home of Eli Williams when Raymond Wright, John Walker and Dewey Taylor were also present at that home?

Mr. Hepp: Just a moment, sir, before you answer. I'd like to object to that unless it's tied into time and place and relates to the issues before this court. It could be extraneous issues and we could be here all night.

The Court: Objection overruled. He may answer that question.

A. Yes, I was.

Q. (By Mr. Plummer): Would you give us your best estimate, sir, as to the time when this happened and occurred?

A. I don't know exactly what day it was.

Q. Would you give us your best estimate, sir?

A. Well, the best of my knowledge, I'd say it was about a year ago.

Q. In the wintertime?

Mr. Hepp: I object to his arguing with the witness.

Mr. Plummer: No, I asked him. [561]

Q. (By Mr. Plummer): Was there snow on the ground, sir? A. No, there wasn't.

Q. What was the weather? Do you recall?

A. Pleasant weather.

Q. Pleasant weather. Do you recall how you were dressed on that occasion?

A. No, I don't remember.

Q. Do you recall how Mr. Wright, Mr. Walker and Mr. Taylor were dressed?

(Testimony of Ernest Yokely.)

A. Offhand, no.

Q. And did you have some conversation with the people there on that occasion?

Mr. Hepp: Now, I object to that. I don't see how it relates to the issues before this court. He says "about a year ago." I think that would be in February and there is certainly nothing before this court to set a suggestion, February, 1957, that relates to the issues before this court.

The Court: Well, Mr. Hepp, it appears to the court that the witness did testify that it was pleasant weather and not in the wintertime, so, therefore, it would not be a year ago.

Mr. Hepp: Well, I submit, your Honor, at least to me this is very pleasant weather, and not wintertime; yet, right now——

The Court: I recall he also testified there was no [562] snow on the ground.

Mr. Hepp: Well, I believe that that is nearly true.

The Court: Objection overruled. You may answer.

Mr. Plummer: What was the question, Bonnie? Would you read it back, please?

(Thereupon, the Court Reporter read back the Question on Page 562, Line 12.)

A. We was there; just had a few drinks.

Q. Can you give me any idea, sir, was this before or after the shooting out at Ford's Cafe when Ben Wroe was killed?

(Testimony of Ernest Yokely.)

A. I think it was after.

Q. And do you have any idea of the length of time after? A. No, I don't.

Q. Could it have been before?

Mr. Hepp: I object to that as calling for purely a speculation on the part of the witness and I object to it for that reason. It's not a positive offer to which I can analyze objection.

The Court: Well, objection will be sustained to the last question.

Q. (By Mr. Plummer): Was it before?

A. I don't know exactly when it was that that shooting occurred out there at Ford's Cafe.

Q. Well, was this before or was it after the shooting? [563]

A. I said I think it was afterwards; I don't know definitely.

Q. Was it at the same week end of the shooting?

A. I don't know definitely.

Q. Either that it was or wasn't?

A. I don't know.

Mr. Plummer: I have no further questions.

The Court: Any cross-examination?

Mr. Hepp: I have no questions.

The Court: Very well, you may step down, Mr. Yokely. Thanks for coming.

Mr. Kay: I have a few questions.

The Court: Pardon me, Mr. Yokely, Mr. Kay has a question.

ERNEST YOKELY

testifies as follows on

Cross-Examination

By Mr. Kay:

Q. Mr. Yokely, have you ever been convicted of a crime? A. Yes.

Q. One or more? A. One.

Q. And you are now under arrest and waiting trial for another charge against you, are you not?

A. I don't know definitely; I think so. [564]

Q. Well, there's been a charge placed against you for attempting to escape? A. Yes.

Q. And you haven't been tried on that yet, have you? A. No.

Q. You don't know what the disposition of that is going to be, if any? A. No, I don't.

Mr. Kay: No further questions.

The Court: Any redirect?

ERNEST YOKELY

testifies as follows on

Redirect Examination

By Mr. Plummer:

Q. As a matter of fact, didn't my office convict you of white slavery during this last winter?

A. Yes.

Q. And haven't we also filed charges against you for escaping from the prison?

A. That is right.

(Testimony of Ernest Yokely.)

Q. Would that have anything to do with your inability to remember the date on this occasion?

A. No.

Mr. Plummer: No further questions. [565]

The Court: Very well, you may step down, Mr. Yokely.

(Thereupon, the witness was excused and left the stand.)

Mr. Plummer: May I have just about a 5-minute recess, your Honor?

The Court: Very well, without objection. Any objection?

Mr. Gore: No.

The Court: Court will go into recess for a period of five minutes.

(Whereupon, at 4:45 o'clock p.m., following a 5-minute recess, court reconvened, and the following proceedings were had:)

The Court: Let the record show that all the jurors are back and present in the box. Mr. Plummer, you may call your next witness.

Mr. Plummer: The prosecution rests, your Honor.

The Court: Very well. Counsel for the defense may make their opening statement at this time, Mr. Hepp and Mr. Kay.

Mr. Hepp: At this time we would like the customary motions at the close of the prosecution.

The Court: Very well, you may approach the bench.

Mr. Hepp: I am afraid they will be more extended in the company of the jury, and recognizing the hour as being ten to 5:00, well, I just doubt that we could prepare and present them in the interests of our clients, under the circumstances of crowding around the bench and whispering and having the jury and I [566] think they may be extended also.

The Court: Now, in that respect, could counsel advise the Court how many witnesses they intend to call, assuming that your motions are not favorably ruled upon?

Mr. Hepp: Well, I believe that this motion may deal directly with a matter of whether or not the trial goes on or not.

The Court: Of course, I appreciate that. Well, surely, you must have some indication so I can plan my work.

Mr. Kay: If we are required to, I intend to present three, possibly four witnesses, your Honor, on behalf of the Defendant Ing.

The Court: Mr. Hepp?

Mr. Hepp: Well, one, possibly two, very short ones, and there is a small chance of a third. I haven't quite made up my mind.

The Court: Thank you. Mr. Nesbett?

Mr. Nesbett: Your Honor, I am not in a position to be able to say until after the motions are argued.

The Court: Very well. Suppose we consider this then, counsel: that we came in early tomorrow

morning and heard these arguments and then had the jury come in at the regular time.

Mr. Kay: I am perfectly willing to work over-time, your Honor, in order to serve the convenience of the Court and the jury, however, I'd like to point out that we have proceeded at a fairly leisurely pace so far in the case. We have had a long week end [567] intervened and—in other words, the Government has not been pressed at all in the presentation of their case, and I hope that the same feeling will be present during the presentation of the defense case, which will not be long.

The Court: I can assure you that that will be the case.

Mr. Kay: I hoped that it would. May I ask then, your Honor, that if your Honor does want to take up early, since we will have to work tonight, of course, and in the morning to getting ready, in the event that our motions are not prevailing, may I suggest that we meet at 9:30 and perhaps let the jury come in at 11:00 because I am sure that the arguments are going to be—on my part the arguments are going to be extensive and I hope convincing.

Mr. Hepp: I submit to the Court that perhaps the entire morning could be consumed in arguments and it may be advisable for the Court to consider dismissing the jury until the afternoon session. I am quite sure that there will be some time spent in this matter.

The Court: Well, I perceive it will be some time, but that is an unusually long time for this type of

motion, unless there is something I don't perceive or haven't seen. I am not of the opinion it will take that long. I point out to counsel, under the rules, the rules are that they are not allowed that length of time to argue without a proper showing.

Mr. Kay: Considering the number of counsel I don't think [568] that the rules would—my suggestion—would certainly not exceed the length of time allowed under the rules, your Honor—meeting at 9:30 and having the jury come in at 11:00 would certainly not—considering the fact that the United States Attorney and four counsel may argue.

The Court: Well, as I recall, aren't arguments limited to 15 minutes unless otherwise—

Mr. Kay: Three, four counsel would be 60 minutes and we assume that Mr. Plummer only takes a half hour to reply to all four.

The Court: I am calling to Rule 3(7), "Unless otherwise specially ordered, no longer than one-quarter hour shall be allowed each party for argument upon any motion, or on any hearing, other than a final hearing on the merits; * * *"

Mr. Kay: That would take then, your Honor, at least an hour. If we adhere very strictly, your Honor, to the rule it would take one minute longer than—each counsel having 15 minutes it would require one hour for arguments to be heard.

The Court: What would be wrong with coming in at 9:00 o'clock and excusing the jurors until 10:30?

Mr. Kay: The only objection I would have to it, is that we have got a lot of work to do tonight and

I don't like to go to bed at midnight or 1:00 o'clock and have to get up at 7:00 o'clock in order to be here at 9:00. From my point of view, I'd like a little more time than that to sleep and prepare for this [569] defense for this most important case.

Mr. Hepp: I'd like to submit to the Court I don't even have my office here and I'm under some handicap in getting my work out and I have had to avail myself for the use of other offices and I can't schedule my hours quite like I could in Fairbanks.

The Court: Well, let's compromise, counsel, let's make it 9:15 and then the jurors could be excused until 10:30. That then will give you an hour and 15 minutes. That will allow you extra time, Mr. Kay—without objection. Ladies and gentlemen of the jury, you are now excused to report tomorrow morning at the hour of 10:30. As you know, you are instructed not to discuss this case among yourselves, nor are you permitted to let others discuss it with you, and this Court will stand adjourned until tomorrow morning at the hour of 9:15.

(Thereupon, at 5:00 p.m., court was adjourned to the next morning, this case to be resumed at 9:15 o'clock a.m., February 27, 1958.) [570]

(Defense counsel, Mr. Kay, Mr. Hepp, and Mr. Nesbett, moved for judgments of acquittal on behalf of their respective clients.

(Following arguments by defense counsel and the United States Attorney, the Court ruled

motion for judgment of acquittal in the case of Defendant Smith denied, and reserved decision on motions for judgment of acquittal in the cases of Defendants Ing and Wright.

(Thereafter, all defense counsel rested their cases, closing arguments were had, and the case was submitted to the jury for deliberation.) [573]

The Court: Ladies and gentlemen of the jury, have you reached a verdict?

Jury Foreman: We have.

The Court: Very well, you may hand it—first—pardon me. Let's call the roll of the jury.

(Thereupon, the Deputy Clerk called the roll of the trial jury.)

Deputy Clerk: All members of the jury are present, your Honor.

The Court: Very well, you may hand the verdict to the Bailiff.

(Thereupon, the sealed verdict was handed to the Bailiff, the Bailiff handed it to the Court, and the Court handed the verdict to the Deputy Clerk with the instructions that the verdict be read and filed.) [576]

* * *

Mr. Kay: Defendant Ing requests to poll the jury on the verdict just announced, your Honor.

The Court: Very well. Will you just be seated then. Would you then please poll the jury.

(Thereupon, the Deputy Clerk polled the jury and all of the jurors answered in the affirmative to the question put to them: "Is the verdict just read, your verdict?")

The Court: Very well. You may then proceed, at your convenience, with the reading of the other verdicts. [578]

* * *

The Court: Ladies and gentlemen of the jury: Is that your verdict so say ye all?

The Jury: Yes.

The Court: Very well. You may now be excused then.

Mr. Nesbett: Pardon me, your Honor. I would like the jury polled as to Verdict No. 3.

The Court: All right. Thank you. Would you please poll the jury then as to Verdict No. 3.

(Thereupon, the Deputy Clerk polled the jury and all of the jurors answered in the affirmative to the question put to them: "Is the verdict just read, your verdict?")

The Court: Mr. Hepp, do you desire to have the jury [581] polled as to Mr. Wright?

Mr. Hepp: No.

The Court: Thank you. Very well, ladies and gentlemen, thanks for your services. You are now excused to report next Monday morning at the hour of 10:00 a.m. and there will be no movement in the courtroom while the jurors are going from the courtroom. [582]

United States of America,
Territory of Alaska—ss.

I, Iris L. Stafford, Official Court Reporter of the
above-entitled Court, hereby certify:

That the foregoing is a true and correct transcription of proceedings on the trial of the above-entitled action, taken by me in stenograph in open court at Anchorage, Alaska, on February 19 and 20, 1958, and thereafter transcribed by me.

/s/ IRIS L. STAFFORD.

United States of America,
Territory of Alaska—ss.

I, Bonnie T. Brick, Official Court Reporter of the
above-entitled Court, hereby certify:

That the foregoing is a true and correct transcription of proceedings on the trial of the above-entitled action, taken by me in stenograph in open court at Anchorage, Alaska, on February 24, 25, 26, 27, and 28, 1958, and thereafter transcribed by me.

/s/ BONNIE T. BRICK.

[Endorsed]: Filed October 10, 1958. [583]

[Title of District Court and Cause.]

CLERK'S CERTIFICATE
ORIGINAL RECORD

I, Wm. A. Hilton, Clerk of the above-entitled
Court, do hereby certify that pursuant to Rule

10 (1) of the Rules of the United States Court of Appeals, Ninth Circuit, I am transmitting herewith the following Original Papers in my office dealing with the above-entitled action or proceeding:

1. Indictment.
2. Plea of Not Guilty, etc.
3. Verdict No. 1.
4. Judgment.
5. Notice of Appeal.
6. Motion for New Trial.
7. Praecipe (Designation of Record).
8. Statement of Points Relied On.

Reporter's transcript to follow when furnished.

The papers herewith transmitted constitute the record on appeal to the United States Court of Appeals, Ninth Circuit, San Francisco, California, from Judgment filed and entered in the above-entitled cause by the above-entitled Court on the 5th day of March, 1958.

Dated at Anchorage, Alaska, this 4th day of September, 1958.

[Seal] /s/ WM. A. HILTON,
Clerk.

[Title of District Court and Cause.]

CLERK'S CERTIFICATE
ORIGINAL RECORD

I, Wm. A. Hilton, Clerk of the above-entitled court, do hereby certify that pursuant to Rule 10 (1)

of the Rules of the United States Court of Appeals, Ninth Circuit, and Rules 75 (g) and 75 (o) of the Federal Rules of Civil Procedure and the designation of counsel for the defendant-appellant, I am transmitting herewith the Original Papers in my office dealing with the above-entitled action or proceeding. Reporter's transcript of record, in two volumes, mailed October 14, 1958.

The papers herewith transmitted constitute the record on appeal to the United States Court of Appeals, Ninth Circuit, San Francisco, California, from Judgment filed and entered in the above-entitled cause by the above-entitled Court on the 5th day of March, 1958.

Dated at Anchorage, Alaska, this 13th day of November, 1958.

[Seal] /s/ WM. A. HILTON,
Clerk.

[Endorsed]: No. 16199. United States Court of Appeals for the Ninth Circuit. James Burton Ing and Raymond Wright, Appellants, vs. United States of America, Appellee. Transcript of Record. Appeals from the District Court for the District of Alaska, Third Division.

Filed: September 8, 1958.

Docketed: September 29, 1958.

/s/ PAUL P. O'BRIEN,
Clerk of the United States Court of Appeals for the
Ninth Circuit.